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ABSTRACT

At the request of Senator John Heinz, the General Accounting Office (GAO) conducted a study on the quality of care provided to nursing home residents to determine the extent of repeated noncompliance with federal requirements that could affect resident health and safety and to evaluate the adequacy of federal and state enforcement actions to correct the deficiencies. The study was conducted in Arkansas, California, Connecticut, Kansas, and Wisconsin. The GAO identified nursing home requirements that most directly affected resident care, health, or safety; analyzed nursing homes' compliance with those requirements during the four most recent inspections; developed detailed case studies on 26 judgmentally selected nursing homes to evaluate the adequacy of enforcement actions; reviewed federal and state laws relating to nursing home care; evaluated potential alternative sanctions; and interviewed federal, state, and private sector officials. The results revealed that repeated noncompliance was widespread, that nursing homes with serious deficiencies avoided penalties, and that alternative penalties were needed. Based on these findings, the GAO recommended passage of federal legislation to establish a wide range of alternative sanctions for noncompliance with nursing home requirements. (NB)

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United States General Accounting Office

GAO

Report to the Ranking Minority Member, Special Committee on Aging, U.S. Senate

July 1987

MEDICARE AND MEDICAID

Stronger Enforcement of Nursing Home Requirements Needed

CB 020566

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United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-225935

July 22, 1987

The Honorable John Heinz
Ranking Minority Member,
Special Committee on Aging
United States Senate

Dear Senator Heinz:

This report on the enforcement of Medicare and Medicaid requirements for nursing homes identifies the need for legislation, such as you have cosponsored, to provide additional sanctions to improve compliance with the requirements.

As you have requested, we did not obtain comments from the Department of Health and Human Services, the five states included in the review (Arkansas, California, Connecticut, Kansas, and Wisconsin), or the 26 nursing homes reviewed in detail. Also, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will provide copies to the Secretary of Health and Human Services; the Director, Office of Management and Budget; the Governors of the five states; the 26 nursing homes; and other interested parties.

Sincerely yours,

Richard L. Fogel
Assistant Comptroller General

Executive Summary

Purpose

One of every four elderly will enter a nursing home during his or her lifetime. Because of continuing concern about the quality of care provided to nursing home residents, Senator John Heinz, Ranking Minority Member of the Senate Special Committee on Aging, asked GAO to (1) determine the extent of repeated noncompliance with federal requirements that could affect resident health and safety and (2) evaluate the adequacy of federal and state enforcement actions to correct the reported deficiencies.

GAO did the work in Arkansas, California, Connecticut, Kansas, and Wisconsin.

Background

Medicare is a federal health insurance program that assists almost all Americans 65 and over and certain disabled persons in paying for their health care costs. Medicaid is a grant-in-aid program by which the federal government pays from 50 to 79 percent of costs incurred by states for medical services provided to certain low-income persons. Together, the two programs pay about half of the nation's nursing home costs.

At the federal level, the Health Care Financing Administration, a part of the Department of Health and Human Services, is responsible for administering the two programs. States must determine each nursing home's compliance with federal requirements at least annually. This is done through an inspection of the nursing home.

Although the states decide whether nursing homes can participate in the Medicaid program, the Health Care Financing Administration reviews those decisions and can override the states when it disagrees or determines that a state did not follow federal requirements. The decision with respect to certification of nursing homes for the Medicare program is made by the Health Care Financing Administration.

Results in Brief

Nursing homes can remain in the Medicare and Medicaid programs for years with serious deficiencies that threaten patient health and safety by taking corrective action to keep from being terminated each time they get caught. GAO analyzed the four most recent inspections (covering about a 4-year period) for nursing homes participating in the programs in November 1985. Forty-one percent of skilled nursing facilities and 34 percent of intermediate care facilities nationwide were out of compliance during three consecutive inspections with one or more of the 126 skilled or 72 intermediate care facility requirements considered by

experts to be most likely to affect patient health and safety. A determination of the actual effects on patients' health and safety was beyond the scope of GAO's review.

Under current federal law and regulations, nursing homes that correct a deficiency prior to the end of the certification period or submit an acceptable plan for correcting the deficiency are allowed to continue to participate in Medicare and Medicaid without incurring any penalty for the noncompliance. Although a nursing home that has the same deficiencies in consecutive inspections without adequate justification should be terminated, according to Medicare and Medicaid regulations, neither HHS nor the states were enforcing this rule. No federal penalties currently apply to deficiencies, even if uncorrected, that do not pose an immediate threat to resident health and safety. The ability to avoid penalty even for serious or repeated noncompliance gives nursing homes little incentive to maintain compliance with federal requirements.

GAO believes additional sanctions are needed to strengthen federal and state enforcement options.

Principal Findings

Repeated Noncompliance Is Widespread

GAO found that 3,372 of the 8,298 skilled nursing facilities and 2,005 of the 5,970 skilled nursing facilities did not meet one or more of the requirements most likely to affect resident health or safety during three consecutive inspections.

Nursing Homes With Serious Deficiencies Avoid Penalties

GAO reviewed inspection records on 26 nursing homes in the five states in more detail to find out why they were able to continue in the program with repeated deficiencies. The 26 nursing homes were selected primarily on the basis of multiple repeat deficiencies. Among the most frequently cited deficiencies were inadequate nursing services, poorly maintained and dirty interior surfaces such as walls and floors, malfunctioning or broken plumbing, uncontrolled odors, improper use of physical restraints, and improper diets.

Of the 26 facilities, 15 were found during a total of 26 inspections to have deficiencies sufficiently serious to preclude continued participation in the Medicare and/or Medicaid programs if not corrected. Only three

of the inspections ultimately resulted in decertification. For the other 23 inspections, the facilities were, as permitted by federal law and regulations, given the opportunity to correct the deficiencies before the end of the certification period and remain in the programs without penalty. Seven of the nursing homes were again found to have serious deficiencies that would prevent continued participation in the Medicare and Medicaid programs in a subsequent inspection.

Two of the three nursing homes that were decertified were readmitted to the Medicaid program within 76 days even though they were still out of compliance with some of the requirements that caused them to be terminated. Generally, Medicare, but not Medicaid, law precludes the readmission of a nursing home unless the state can establish that the deficiencies that caused the termination have been corrected.

Less Serious Deficiencies Not Penalized

Although the other 11 facilities GAO reviewed also had repeat deficiencies, they faced no threat of decertification during the periods reviewed because they were judged to be in substantial compliance, i.e., with no deficiencies that immediately jeopardized patient health and safety. Federal regulations require only that such facilities submit an acceptable written plan for correcting the deficiencies.

Facilities with deficiencies that do not seriously threaten residents' health and safety have continued participation in the programs for long periods without maintaining compliance with the requirements. For example, a Kansas nursing home was cited in three consecutive inspections for having unqualified personnel insert or withdraw tubes used to administer drugs or provide nourishment, storing food improperly, and failing to control facility odors, and in two inspections for failing to keep the building interior clean and well maintained. The nursing home received no penalty for the repeat deficiencies because termination was the only sanction authorized under Medicare and Medicaid.

Justification of Repeat Deficiencies

Medicare and Medicaid regulations permit nursing homes with most types of repeat deficiencies to be recertified only if they can adequately justify the repeated noncompliance. These regulations were not adequately followed by the Health Care Financing Administration or the state Medicaid agency in any of the 49 inspections where GAO found they should have been applied. Federal and state officials generally said that they were reluctant to apply the repeat deficiency rules because decertification was too severe a penalty for most repeat deficiencies.

Alternative Penalties Needed

GAO agrees with the states and the Health Care Financing Administration that termination is too severe a penalty for many deficiencies. Two alternatives are civil monetary penalties and bans on new admissions until deficiencies are corrected.

About half of the states do not have authority, under state nursing home licensing laws, to impose civil monetary penalties or deny payment for new residents. States that do have such authority have made limited use of it. Because of the limited availability and use of alternative sanctions by the states, state programs do not adequately fill the gaps in the federal enforcement program.

Several federal agencies currently use civil monetary penalties as a means of enforcing regulations. For example, the Environmental Protection Agency considers the threat of fines to be an important deterrent in its toxic substances program. The penalty system tailors the penalty to the situation, considering such factors as the nature, circumstances, and extent of the violation, repeat violations, and the ability to pay without endangering continued operation.

Recommendations

Legislation has been introduced in both the House of Representatives (H.R. 2270 and H.R. 2770) and the Senate (S. 1108) to establish a wide range of alternative sanctions for noncompliance with nursing home requirements that could be used both by the states and the Department of Health and Human Services. These bills contain provisions that could help overcome the problems that have limited use of alternative sanctions in state licensing laws. GAO recommends enactment of such legislation, but believes it should be expanded to set conditions for readmitting nursing homes that have been terminated from the Medicaid program.

GAO is also making several recommendations to the Department of Health and Human Services to strengthen its use of existing regulatory authority to deal with nursing homes that have repeat deficiencies that threaten patient health and safety and should be terminated from the Medicare and Medicaid programs.

Agency Comments

GAO did not obtain agency comments.

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Abbreviations

HCFA	Health Care Financing Administration
HHS	Department of Health and Human Services
M/MACS	Medicare/Medicaid Automated Certification System

Introduction

One of every four elderly will enter a nursing home during his or her lifetime. In light of continuing concern about the quality of nursing home care, Senator John Heinz, Ranking Minority Member of the Senate Special Committee on Aging, requested that we (1) determine the number and potential effects of nursing homes that are repeatedly out of compliance with Medicare and Medicaid nursing home requirements and (2) evaluate the adequacy of federal and state enforcement actions when nursing home deficiencies are identified.

Nursing Home Care Under Medicare and Medicaid

The Medicare and Medicaid programs, authorized by titles XVIII and XIX of the Social Security Act (42 U.S.C. 1395 and 1396), are administered by the Health Care Financing Administration (HCFA) within the Department of Health and Human Services (HHS). Medicare is a federal health insurance program that assists almost all Americans 65 and over and certain disabled persons in paying for their health care costs. Medicaid is a grant-in-aid program by which the federal government pays from 50 to 79 percent of costs incurred by states for medical services provided to recipients of cash assistance[1] and for other low-income persons unable to pay for needed health services.

The Social Security Act authorizes payment for nursing home services provided in skilled nursing facilities under the Medicare program and in either skilled or intermediate care facilities under Medicaid.[2] Skilled nursing facilities are designed to care for persons whose need for daily professional nursing services is demonstrated and documented. Intermediate care facilities care for persons who do not require the degree of care and treatment a hospital or skilled nursing facility is designed to provide but, because of a physical or mental condition, require supervision, protection, or assistance.

In fiscal year 1986, Medicare payments for skilled nursing facility care were about $794 million, and the federal share of Medicaid payments for nursing home services was about $6.9 billion (including about $3.0 billion for skilled nursing facilities and $3.9 billion for intermediate care facilities).

[1]Individuals receiving payments under the Aid to Families with Dependent Children or the Supplemental Security Income programs.

[2]A third type of nursing facilities, authorized under the Medicaid program, intermediate care facilities for mentally retarded, was not included in our review.

Survey and Certification Process

To participate in Medicare and/or Medicaid, a nursing home must have a provider agreement with HCFA (Medicare) or the state Medicaid agency (Medicaid). HHS regulations limit provider agreements to 12 months and specify that the agreements cannot be renewed unless the facility has been inspected and certified by the state or HCFA as being in adequate compliance with Medicare and/or Medicaid requirements.

HCFA establishes requirements for nursing home participation. Skilled nursing facilities must meet over 400 requirements, broken down into three levels. The first level consists of 18 conditions of participation covering such general areas as dietetic, nursing, pharmaceutical, and physician services; facility administration; and environment. Each condition of participation has one or more subordinate requirements called standards (second level). For example, the dietetic services condition has seven subordinate standards covering such areas as staffing, staff hygiene, and sanitary conditions. Some standards are further broken down into subordinate requirements, called elements (third level). For example, the dietetic services standard for sanitary conditions comprises four elements, covering such things as food procurement and storage and waste disposal. In conducting surveys, inspectors determine compliance with the elements of a standard and then conclude as to whether the standard is met. After making similar judgments for all standards under a condition of participation, the inspectors conclude whether the applicable condition is met.

Intermediate care facilities must comply with approximately 170 requirements. Although there are no conditions of participation or elements, the requirements cover essentially the same areas as the skilled nursing facility requirements.

Inspections to determine compliance with the requirements are made by state health agencies or other appropriate agencies under agreements with HCFA and the state Medicaid agency. The inspecting agencies, referred to as state survey agencies, usually also are responsible for enforcing state nursing home licensure requirements. Federal regulations require that facilities have a state license in order to participate in the Medicare and Medicaid programs. The state agencies usually perform inspections for the federal certification and state license concurrently and receive federal funding from HCFA to support the federal portion of this activity.

The state survey agency inspects each nursing home at least annually, with the inspection taking place about 90 days before the end of the

certification period to give the nursing home an opportunity to correct any deficiencies identified. The facility is given a written report covering any such deficiencies. The facility then prepares and submits to the state agency a written plan showing how and when each deficiency will be corrected.

Sanctions for Noncompliance

A facility can lose its certification if it is no longer in substantial compliance with the federal requirements and the underlying deficiencies jeopardize resident health and safety or seriously limit the facility's ability to provide adequate care. A facility can also lose its certification if it cannot adequately justify why it had certain types of repeat deficiencies.

Where the facility participates in Medicaid only, the state agency makes the final certification decision and, where the decision is to not certify, initiates adverse action. Where the facility participates in Medicare, the state agency makes a certification recommendation to HCFA, which makes the final decision and, where indicated, initiates enforcement action. When facilities with uncorrected deficiencies are recertified on the basis of a plan of correction, the state agency is responsible for performing follow-up and reporting on whether the deficiencies were, in fact, corrected.

As of November 1986, almost 14,700 nursing homes were certified to participate in the Medicare and/or Medicaid programs. (See table 1.1.)

Table 1.1: Number of Facilities Certified November 1986

Type of certification	No.
Skilled nursing facilities	9,053[a]
Intermediate care facilities	5,603
Total	**14,656**

[a]Includes 6,437 facilities certified as both skilled and intermediate care facilities.

Since August 1986, HCFA and the states also have been authorized to deny payments for new admissions of Medicare and/or Medicaid patients (bans on admissions) to nursing homes that are not in substantial compliance with federal requirements but whose deficiencies do not create an immediate threat to resident health and safety. The ban continues until the deficiencies are corrected (see p. 39.). Decertification

and bans on admissions are currently the only federal sanctions for noncompliance with federal nursing home requirements. Additional sanctions such as civil monetary penalties, receivership, and bans on admissions can be established by the state under its licensing program.

HCFA Oversight

Federal oversight of state survey and certification activities is provided by HCFA's 10 regional offices. The primary oversight techniques used to assure that states comply with federal regulations, guidelines, and procedures are

- desk review of survey and certification documents submitted by the state agencies to assure that federal regulations are followed and that conclusions as to certifiability are supported by the findings,
- on-site surveys of selected participating facilities conducted by regional personnel, and
- visits to the state agency to evaluate compliance with federal policies, guidelines, and instructions.

The regional offices prepare periodic reports evaluating the activities of each state agency and noting any problems identified. The state agencies submit action plans for dealing with those problems, and the regional offices follow up on those plans. HCFA headquarters, in turn, periodically evaluates the oversight activities of each region.

HCFA's degree of control over enforcement of federal requirements differs for Medicare and Medicaid. HCFA has total enforcement control when a facility participates in Medicare because the agency has final decision-making authority regarding the certification status, issuance of the provider agreement, and any enforcement actions. When a facility participates only in the Medicaid program, enforcement authority generally rests with the state agencies. When Medicaid providers are involved, however, statutes and regulations grant HCFA authority to

- refuse federal funding for state payments to a facility for any periods in which the state agency failed to comply with federal regulations, guidelines, and procedures in making a certification decision and
- take direct enforcement action against a Medicaid facility when a HCFA-conducted survey discloses that certification is not justified.

Institute of Medicine Report

In February 1986, the National Academy of Sciences' Institute of Medicine completed a comprehensive review of nursing home regulation for HCFA.[3] The Institute's work included an evaluation of the adequacy of (1) the federal requirements that nursing homes must meet to participate in the federal program, (2) the inspection process to determine compliance with those requirements, and (3) the enforcement actions taken when deficiencies are identified.

The report recommended that the current regulatory distinctions between skilled and intermediate care facilities be eliminated and a new regulatory system be developed that would focus on the quality of care actually provided to residents and its effects on them instead of on the nursing home's capability to provide care. With respect to inspections, the Institute recommended a new inspection system that would involve less detailed inspections for facilities consistently in compliance and more stringent inspections for facilities repeatedly out of compliance. Finally, the Institute recommended that title XIX be amended to provide for additional sanctions such as civil monetary penalties and bans on admissions and federal guidelines be written on how and when the sanctions should be applied.

Legislation has been introduced in both the House of Representatives (H.R. 2270 and H.R. 2770) and the Senate (S.1108) to implement recommendations contained in the Institute's report (see p. 41).

Objectives, Scope, and Methodology

At the request of Senator John Heinz, Ranking Minority Member of the Senate Special Committee on Aging, our work focused on the

- extent and potential effect of repeated noncompliance with nursing home requirements and
- the adequacy of enforcement actions taken by state and federal agencies when deficiencies were identified.

We did our work at HCFA's headquarters in Baltimore; at HCFA regional offices in Boston, Chicago, Dallas, Kansas City, and San Francisco; and at state survey agencies in Arkansas, California, Connecticut, Kansas, and Wisconsin. We selected four states (Arkansas, California, Connecticut, and Kansas) that had a large percentage of their facilities repeatedly fail to comply with selected requirements and a fifth state—Wisconsin—that had few identified repeat offenders.

[3]Improving the Quality of Care in Nursing Homes, Feb. 28, 1986.

To meet our objectives we

- identified nursing home requirements that most directly affect resident care, health, or safety;
- analyzed nursing homes' compliance with the selected requirements during the four most recent inspections (covering approximately a 4-year period) as of November 1985;[4]
- developed detailed case studies on 26 judgmentally selected nursing homes to evaluate the adequacy of enforcement actions;
- reviewed federal and state laws, regulations, and guidelines relating to nursing home quality of care;
- evaluated potential alternative sanctions to strengthen the enforcement program; and
- interviewed federal, state, and private sector officials to obtain their interpretation of the enforcement provisions and their views on ways to strengthen the enforcement program.

Additional details of our methodology are contained in appendix I.

We did our work between April 1985 and March 1987 in accordance with generally accepted government auditing standards, except that we did not, at the request of the Committee, obtain agency comments on a draft of this report. The views of directly responsible officials were sought during the course of our work and are incorporated in the report where appropriate. Limitations in our methodology are discussed in appendix I.

[4]As discussed in more detail on pp. 46-47, more recent data were not suitable for the type of analysis we did because of changes in the coding of requirements.

Repeated Noncompliance With Nursing Home Requirements Is Widespread

Over a third of the nursing homes participating in Medicare and/or Medicaid in November 1985 failed to meet one or more of the nursing home requirements considered by nursing home experts to be most likely to affect residents' health and safety in three or more consecutive inspections during an approximately 4-year period. Many of the skilled nursing facilities (25 percent) and intermediate care facilities (16 percent) had two or more repeat deficiencies. The types of repeat deficiencies most frequently cited were problems in the provision of nursing care, in facility environment, and in food services.

While the requirements selected for review are among those where a deficiency would be most likely to affect patient health and safety, our analysis of computerized inspection results did not enable us to determine the actual effects the deficiencies may have had on residents' health and safety.

How the Analysis Was Performed

To determine the extent and seriousness of noncompliance, we (1) identified requirements that most directly affect resident care, health, or safety and (2) determined compliance rates with those requirements by all participating facilities.

In identifying requirements that most directly affect resident care, health, or safety, we (1) analyzed HCFA procedures and guidelines to determine those requirements the agency considered most important and (2) solicited opinions of 14 organizations having knowledge of the Medicare and Medicaid nursing home programs. The organizations queried and details regarding the identification process are shown in appendix I.

Using this approach, we selected for review the 18 skilled nursing facility conditions of participation, 126 of the over 400 skilled nursing facility standards and elements (see app. II), and 72 of the approximately 170 intermediate care facility requirements (see app. III).

To determine the extent of noncompliance with these requirements we used HCFA's Medicare/Medicaid Automated Certification System (M/MACS). Among other things, this system contains state-furnished data showing specific requirements that a participating facility failed to meet in each of the facility's four most recent inspections. The database we used in analyzing compliance reflected facility compliance history prior to November 1985. Details regarding the database, appear in appendix I.

Repeated Noncompliance With Requirements

Only 16 nursing homes were out of compliance with a skilled nursing facility condition of participation during three consecutive inspections.[1]

As shown by tables 2.1 and 2.2, however, 41 percent of the 8,298 certified skilled nursing facilities[2] and 34 percent of the 5,970 certified intermediate care facilities reviewed were out of compliance during three or more consecutive inspections with one or more of the 126 skilled nursing facility standards and elements, or 72 intermediate care facility requirements nursing home experts judged most likely to affect patient health and safety.

Furthermore, 25 percent of skilled and 16 percent of intermediate care facilities were noncompliant for two or more requirements. The extent of repeated noncompliance was even more pronounced when considering two—rather than three—consecutive inspections: 71 percent of the skilled and 64 percent of the intermediate care facilities were out of compliance with one or more requirements in two consecutive inspections. Appendixes II and III provide additional details on the requirements that were not met.

Table 2.1: Number of Skilled Nursing Facilities That Failed to Meet Selected Standards and Elements in Three or More Consecutive Inspections

	Number of skilled nursing facilities		
Number of requirements not met	Standards	Elements	Combined total[a]
1	556	1,324	1,326
2	79	766	777
3	22	437	460
4	10	288	292
5	4	162	189
6	3	102	105
7 - 10	•	145	185
11 - 19	•	17	37
20 or more	•	•	1
Total facilities	**674**	**3,241**	**3,372**
Percentage of total facilities screened (8,298)	8	39	41

[a]Numbers do not add across because the same facility may have repeat deficiencies at both the standard and element levels. A facility that had one repeat deficiency at the standard level and one at the element level will show up in the combined total as having two repeat deficiencies.

[1]A total of 175 facilities were out of compliance with a condition of participation during two consecutive inspections, including 45 out of compliance with more than one condition.

[2]Includes facilities dually certified as skilled and intermediate care facilities.

Table 2.2: Number of Intermediate Care Facilities That Failed to Meet Selected Requirements in Three or More Consecutive Inspections

Number of requirements	Number of intermediate care facilities
1	1,048
2	483
3	234
4	109
5	59
6	25
7 - 10	44
11 - 19	3
20 or more	•
Total	**2,005**
Percentage of total facilities screened (5,970)	34%

Because our analysis was based on a review of computerized inspection results, not a detailed review of actual inspection reports, it reflects only the extent of noncompliance, not the seriousness of the individual problems reported. For example, the deficiency that caused a requirement to be marked as not met could range from failure to keep appropriate records to failure to provide adequate direct patient care. A conclusion about the quality of care provided in a facility can only be drawn after more detailed analysis of such supporting documentation as inspection reports, plans of correction, and follow-up inspections and an assessment of the care provided to individual patients.

Types of Repeated Noncompliance

As shown by table 2.3, among the types of repeated noncompliance most frequently identified were those relating to nursing services, facility environment, and dietetic services.

Table 2.3: Categories of Requirements Having the Most Significant Repeated Noncompliance Problems

	Skilled nursing facilities		Intermediate care facilities	
Category	**Percent[a]**	**Rank**	**Percent[a]**	**Rank**
Nursing services	35	1	14	3
Facility environment	18	2	9	5
Dietetic services	16	3	31	1
Resident records	13	4	18	2
Infection control	8	5	[b]	[b]
Administration	3	6	7	6
Compliance with federal, state, and local laws	2	7	11	4
Other	5	•	10	•
Total	**100**		**100**	

[a]Percentage of total instances in which facilities failed to meet one or more requirements in three consecutive periods.

[b]Intermediate care facility requirements do not include an infection control category.

Nursing Services

Nursing homes are expected to provide nursing care, including all ordered health services and routine daily care and assistance. Of the 8,298 skilled nursing facilities, 855 (about 10 percent) were cited in three or more consecutive inspections for not meeting an element specifying that facilities have policies designed to ensure that each patient receives (1) treatment, medication, and diet as prescribed, (2) rehabilitative nursing care as needed, and (3) proper care to prevent decubitus ulcers (bedsores) and deformities; and is (1) kept comfortable, clean, and well groomed, (2) protected from accident, injury, and infection; and (3) encouraged, assisted, and trained in self-care and group activities. About 23 percent of all skilled nursing facilities (1,922 facilities) failed to meet this nursing services requirement in two consecutive inspections.

Similarly, 222 (about 4 percent) of the 5,970 intermediate care facilities were cited in three or more consecutive inspections for not meeting a requirement that nursing services be provided in accordance with the needs of the residents. Also 207 (about 3 percent) were cited for not meeting a requirement that facilities provide health services that assure each resident receives treatments, medications, diets, and other health services as prescribed and planned 24 hours a day. About 11 percent of all certified intermediate care facilities failed to meet these nursing services requirements in two consecutive inspections.

Dietetic Services

Facilities are required to serve well-balanced meals that are attractive to residents and comply with orders for special diets. Equally important is assurance that dietary staff follow proper hygiene procedures and comply with proper sanitation procedures in storing, preparing, and serving food. Inadequate food sanitation procedures can present special risks in an institutional setting where residents are in frail health. For example, one of the facilities included in our review had an outbreak of salmonellosis (a type of food poisoning). State officials attributed five deaths to the outbreak.

Of the 14,268 nursing homes analyzed, 10 percent (817 skilled and 781 intermediate care facilities) were cited in three or more consecutive inspections for not storing, preparing, distributing, and serving food under sanitary conditions; about 26 percent of skilled and 30 percent of intermediate care facilities did not meet this dietetic service requirement in two consecutive inspections. Further, 265 skilled and 195 intermediate care facilities (3 percent of facilities) were cited in three or more consecutive inspections for failure to comply with certain requirements dealing with planning and serving meals, including compliance with orders for special diets; 11 percent did not meet this requirement in two consecutive inspections.

Facility Environment

According to HCFA, the facility environment influences residents' quality of care and quality of life. Failure to keep the facility and equipment clean and well maintained can present health and safety risks, particularly with regard to infection and injury. However, facility environment probably has more direct effect on quality of life. From a resident's perspective, the cleanliness and appearance of the facility are important.

Of the 8,298 skilled nursing facilities, 651 (8 percent) were cited in three or more consecutive inspections because the interior and exterior of the building were not clean and orderly; 1,521 (18 percent) did not meet this requirement in two consecutive inspections. Furthermore, 266 skilled nursing facilities (3 percent) did not meet in three or more inspections an element specifying that essential mechanical, electrical, and patient care equipment be maintained in safe operating condition; 906 (11 percent) did not meet this element in two consecutive inspections. Similarly, 96 of the 5,970 intermediate care facilities (2 percent) were cited in three or more consecutive inspections for not meeting a requirement that the facility maintain adequate conditions relating to environment and sanitation; 291 facilities (5 percent) did not meet this requirement in two consecutive inspections.

Conclusions

As of November 1985, more than one-third of federally certified nursing homes failed to meet one or more requirements where deficiencies are most likely to affect resident health and safety in three or more consecutive inspections. Many of the nursing homes were repeatedly out of compliance with two or more requirements. Repeated noncompliance was most prevalent in the areas of nursing services, facility environment, and dietetic services.

Weaknesses in Enforcement System Allow Repeat Offenders to Avoid Penalty

Nursing homes with deficiencies that seriously threaten the health and safety of residents are able to remain in the Medicare and/or Medicaid programs by correcting the deficiencies between the inspection and the end of the certification period. When the facility is out of compliance with the same requirement during the next inspection, it can again avoid decertification by correcting the deficiencies. HHS should establish stronger rules prohibiting recertification of facilities that repeatedly go in and out of compliance with requirements that seriously affect patient health and safety.

When deficiencies do not seriously threaten patient health or safety, there are no effective federal sanctions to deter noncompliance. Even if the facility is repeatedly out of compliance, it will incur no penalty for not maintaining compliance.

Types of Repeat Deficiencies Identified

To get a better understanding of why so many nursing homes were repeatedly found to be out of compliance with federal requirements, we reviewed the enforcement case files for 26 nursing homes in five states (Arkansas, California, Connecticut, Kansas, and Wisconsin).[1] We selected homes that appeared, based on their computerized inspection records, to have among the worst noncompliance problems in the state.

All 26 nursing homes reviewed had been cited for two or more repeat deficiencies. As shown in table 3.1, repeat deficiencies included not properly recording data on residents' health status, maintaining the building, controlling odors, applying physical restraints, storing and preparing food, and turning bedfast patients.

[1]The case files contained the inspection reports for the nursing home, the plans of correction, and correspondence and memoranda concerning state and federal enforcement actions against the nursing home.

Table 3.1: Types of Repeat Deficiencies Identified in 26 Nursing Homes

Deficiency	Number of nursing homes
Information on residents' health status, such as vital signs, food and fluid intake, skin condition, and diagnostic test results, not consistently recorded[a]	19
Damaged surfaces such as walls, floors, doors, and ceilings not repaired	17
Building interior not kept clean	13
Plumbing broken or malfunctioning	13
Food preparation equipment and utensils not kept clean to prevent food contamination	13
Odors not controlled	13
Physical restraints not properly applied, and/or periodically released or restrained residents not properly exercised[b]	11
Residents not properly groomed	11
Special diets not provided as ordered[c]	10
Lighting fixtures inoperative	8
Food not properly stored, including storage on the floor or with toxic or other incompatible substances	7
Broken windows	6
Bedfast patients not periodically turned or positioned	5
Foods stored at improper temperatures (which could lead to outbreaks of food poisoning)	4
Excessive hot water temperatures in patient rooms	4

[a]Such information is needed by health professionals to detect ailments such as malnutrition, dehydration, and anemia and to plan appropriate medical intervention.

[b]Failure to take these precautions can result in respiratory and circulatory problems.

[c]Special diets are prescribed for residents with ailments such as diabetes, high blood pressure, or obesity and need to be followed to prevent or reduce the risk of further complications.

Although the inspections were facility- rather than patient-oriented, the inspection reports occasionally contain data on the effects of deficiencies on patient health. The following examples illustrate.

Example 1—The April 1985 inspection report for a Kansas skilled nursing facility states that 13 of the facility's residents had bedsores, and that one of the residents had a bedsore on the hip that was four inches in diameter with muscle visible. The surveyor also noted that three of the six patients with feeding tubes were not receiving feeding in accordance with physician's orders. According to the inspection report, one resident who was receiving the wrong feeding had a weight loss of 13 pounds.

Four residents confined to bed were observed in the same position for up to 4 hours, according to the April 1985 inspection report, and three

of the four had bedsores. The nursing home's plan of correction stated that a turning schedule had been posted at the nurses' station and at the head of the bed of each patient who needed to be turned every 2 hours. In addition, the nursing home said that nursing staff had been instructed on turning bedfast patients.

During the next inspection in August 1985, the surveyor identified three bedfast patients—two with bedsores—who were observed in the same position for 2 1/2 to 3 hours. The nursing home again said that nursing staff would be instructed on the importance of turning bedfast residents every 2 hours.

The April 1985 inspection had also noted that heel protectors were not provided as ordered. The nursing home said that the heel protectors had been ordered and received so that there were enough materials for nursing staff to do their jobs. The same deficiency was identified in the August 1985 inspection except that it was noted that one patient was observed with both heels bright red, and one patient had a bedsore on the heel. The nursing home again said that it would provide heel protectors.

The facility also had trouble with staph infections. In the April 1985 inspection, the surveyor noted that no precautions were taken when a preliminary culture indicated that a resident had a staph infection. In its plan of correction, the nursing home responded that the patient had been transferred out of the facility and that preliminary skin and wound isolation measures would be instituted in the future if staff expected a positive culture. The nursing home also said that isolation equipment had been received.

The August 1985 inspection found, however, that the strict isolation ordered by physicians for patients with staph infections was not always carried out. Four residents had developed staph infections during the past 2 weeks, the report said, and two were sent to the hospital. The nursing home responded that no residents currently had staph infections and that it would instruct staff on isolation procedures.

Also, treatment for bedsores was not always given as ordered, according to the August 1985 inspection. The inspection report stated that two residents who had not received proper treatment for bedsores had staph infections.

Example 2—A California skilled nursing facility, inspected in late March and early April 1985, was cited for failing to give care to five patients to prevent formation and progression of bedsores. The surveyor identified

- 17 instances where pressure-reducing devices were not used as indicated to prevent formation and progression of bedsores,
- 5 instances where care was not provided to maintain clean, dry skin free from feces and urine,
- 5 instances where linens and other items in contact with the patient were not changed to maintain a clean, dry skin free from feces and urine,
- 6 instances where physicians' orders for treatment of bedsores were not carried out, and
- 9 instances where the physician was not notified when a bedsore first occurred, as well as when treatment was not effective, and documenting such notification as required.

During the next inspection in September 1985, problems were again cited in the treatment of bedsores.

Opportunity to Correct Serious Deficiencies Without Penalty

Under Medicare and Medicaid regulations and guidelines, nursing homes that have serious deficiencies—those that jeopardize patient health and safety or seriously limit the facility's ability to provide adequate care—are able to remain in the Medicare or Medicaid program without incurring any penalty if the deficiencies are adequately corrected before the expiration of the certification period or before the effective date of termination action. In other words, nursing homes know in advance that they will not be penalized if caught with serious deficiencies as long as they correct them sufficiently to qualify for recertification or stop an ongoing decertification action.

HCFA encourages states to inspect facilities about 3 months prior to expiration of the current certification and provider agreement. This gives the facilities up to 3 months to correct the deficiencies identified and thereby avoid decertification. Where additional time is needed to resolve certification issues, HHS regulations also permit extensions of up to 2 months of both the current certification and provider agreement periods. With the opportunity to correct without penalty, nursing homes have, in our opinion, little incentive to maintain compliance throughout the certification period.

Because of concern that there were undue delays in initiating decertification action against Medicare providers, in December 1985 HCFA instituted new procedures specifying that skilled nursing facilities not in substantial compliance with requirements should be decertified within 90 days of the completion of the inspection and, if the deficiencies posed an immediate and serious threat to residents, within 23 days.

The regulations require that a facility be given an opportunity to appeal a decision to decertify. Payments to the facility can continue for up to 30 days after the effective date of the decertification.

Although 15 of the 26 facilities we reviewed were found in one or more inspections (26 total inspections) to have compliance problems sufficiently serious to preclude recertification unless the deficiencies were corrected, only 3 of the 26 inspections led to decertification.[2] For the remaining 23 inspections, the facility either sufficiently corrected the deficiencies prior to the end of the certification period to qualify for recertification (21 inspections), was recertified following a court appeal (1 inspection), or voluntarily withdrew from the Medicaid program after prolonging participation through administrative and judicial appeal (1 inspection).[3] Seven of the 15 nursing homes were again found to have compliance problems serious enough to prevent continued participation in the Medicare and/or Medicaid program in a subsequent inspection.

The three decertified facilities were readmitted to the program within 62 to 210 days.

When a facility participating in Medicare is terminated, statutes and regulations specify that the facility cannot be readmitted until the reason for termination has been removed and there is reasonable assurance it will not recur. HHS guidelines specify that, after establishing that the reason(s) for termination has been removed, the facility must operate for some period to demonstrate that the deficiencies will not recur before the facility can be readmitted to the Medicare program. The guidelines specify that periods up to 180 days may be justified. The Medicare facility we reviewed that was terminated was out of the program for 210 days.

[2]Nationally, decertification was invoked against skilled and intermediate care facilities in about 300 instances from January 1980 to September 1986.

[3]The latter facility was not participating in the Medicare program.

Unlike Medicare, Medicaid statutes do not include a provision requiring reasonable assurances that deficiencies have been corrected and will not recur except in those instances where HCFA exercises its authority to take direct decertification action against a Medicaid-only provider. A HCFA official told us that HCFA recommends that states follow the Medicare guidelines in deciding whether to readmit a Medicaid-only nursing home. He said, however, that states are free to readmit Medicaid-only nursing homes without such assurances because the Medicaid statutes do not contain provisions comparable to those in the Medicare law. The states readmitted two intermediate care facilities to the Medicaid program—in 62 and 76 days—although they were still out of compliance with some of the requirements previously not met at the time of decertification.

In one case, the facility was recertified even though the state, on surveying the facility to determine eligibility for certification and readmission to the Medicaid program, found that the facility failed to meet three of the same requirements that led to decertification. Similar deficiencies reported in both surveys included unsanitary food preparation, special diets improperly prepared or served, timing and dosage of medications in error, and failure to record diagnostic test results in residents' medical records.

The director of the state survey agency told us that, in processing the application for readmission, the facility was considered as a new applicant with no compliance history, although there had been no change in owner or operator. A HCFA regional office official told us that the state was free to follow this practice under the Medicaid statute, but, had the Medicare statute applied, the nursing home could not have been readmitted without providing reasonable assurances that they would not recur.

Appendix IV provides three case studies to demonstrate how nursing homes can remain in the Medicare and/or Medicaid programs without maintaining compliance with federal requirements.

Nursing Homes Recertified With Less Serious Deficiencies

Medicare and Medicaid regulations permit a nursing home to be recertified with deficiencies if the facility (1) is judged to be in substantial compliance with the requirements and the deficiencies do not jeopardize resident health and safety or seriously limit the facility's ability to provide adequate care, (2) has submitted an acceptable written plan for correcting the deficiencies, and (3) does not have certain types of repeat

deficiencies (see p. 27). A skilled nursing facility is considered to be in substantial compliance unless it fails to meet one or more of the 18 conditions of participation.

HCFA guidelines state that, in reviewing and approving the plans of correction, the state (for Medicaid facilities) or HCFA (for Medicare facilities) should consider such factors as accuracy, comprehensiveness, responsiveness to the cited deficiencies, and whether dates for completing correction are realistic. The regulations and guidelines also require that the state agency perform a follow-up inspection to verify that the deficiencies have been corrected or that the facility is making substantial progress —i.e., the corrections are well underway, and there is tangible and visible evidence of progress. The regulations further provide that, where deficiencies have not been corrected or there is no substantial progress in this regard, the facility can be decertified.

Although all 26 facilities we reviewed had repeated noncompliance problems, the facilities incurred no threat of decertification in 104 of the 130 inspections reviewed because the state (Medicaid) or HCFA (Medicare) concluded that the deficiencies were not serious enough to preclude recertification and that the facilities' plans for correcting the deficiencies were acceptable. Of the 26 facilities, 11 incurred no threat of decertification resulting from compliance problems in any of the inspections included in our review (53 inspections). For the other 15 facilities, which faced the threat of decertification on one or more occasions because deficiencies seriously threatened resident health or safety, the findings in 51 of 77 inspections did not identify deficiencies serious enough to justify termination.

Facilities with deficiencies not serious enough to preclude recertification can continue participation for long periods under these provisions in the regulations. For example, a Connecticut facility was cited in three consecutive surveys for poor general hygiene of residents, unsanitary practices in food serving and linen handling, inoperative lighting fixtures, and damaged facility surfaces (such as floors and walls). Among the deficiencies identified during one or more of the five inspections were

- treatments to decubitus ulcers that were not done and/or consistently recorded;
- essentially bedridden and restrained patients who were not being repositioned at 2-hour intervals;
- patients with long dirty nails, improper mouth care, and urine odors,
- lack of separate areas for the handling of clean and soiled linen;

- treatments not rendered at the frequency ordered by the physician; and
- multiple flies throughout the facility.

The state and HCFA determined that none of the deficiencies were serious enough to preclude recertification in any of the five inspections we analyzed. Both the plans of correction and status of correction established in follow-ups were considered by HCFA and the state to be acceptable. However, during subsequent inspections the same problems were identified. For example, patients were observed with long dirty fingernails during three consecutive inspections.

A Kansas intermediate care facility, over the five certification periods (4 years) we analyzed, was cited in three consecutive inspections for having unqualified personnel inserting or withdrawing residents' tubing devices, storing food improperly, and failing to control facility odors. In two inspections the facility was cited for failing to periodically release restraints and/or exercise restrained residents, and for failing to keep the building interior clean and repair such damaged facility surfaces as walls, doors, and ceilings. The state determined that the nursing home had no compliance problems serious enough to preclude recertification in any of the inspections and that both the plans of correction and status of correction established in follow-ups were acceptable. As a result, the nursing home incurred no penalty for repeated noncompliance with federal requirements.

Because the deficiencies in the Connecticut and Kansas facilities were not considered by HCFA and the states to be serious enough to justify decertification—the only federal sanction available at the time of our review—they were able to continue participation without maintaining continuous compliance or incurring any penalty. In our opinion, this gap in the enforcement system leaves nursing homes little incentive to maintain compliance with federal requirements.

Repeat Deficiency Regulations Not Followed by HCFA and the States

Medicare and Medicaid regulations require that the inspection results be compared to the findings from the preceding inspection to determine whether there are any repeat deficiencies. According to the regulations, a facility with repeat deficiencies can be recertified only if the facility can demonstrate that it (1) achieved compliance with the requirement since the prior period, (2) again became out of compliance for reasons beyond its control, and (3) made a good-faith effort to maintain compliance. The final decision about the adequacy of justification rests with HCFA when Medicare facilities are involved and with the state when

Medicaid-only facilities are involved. Medicaid regulations require states to document determinations in the latter instance.[4] The intent of the regulations, issued in 1974, was to prevent renewal of provider agreements with facilities that are cited repeatedly for the same deficiencies.

Justification Often Not Required

We identified 49 inspections covering 20 of the 26 nursing homes reviewed where the nursing home should have been required to justify repeat deficiencies. As shown in table 3.2, we found either no evidence that the required determinations were made (38 inspections), or the determinations otherwise did not comply with the regulations (11 inspections).

Table 3.2: Compliance With Repeat Deficiency Regulations

	Agency responsible for making determination		
	HCFA	State Medicaid	Total
Periods for which determination should have been made	19	30	49
No evidence of determination	17	21	38
Inadequate determination	2	9	11
Adequate determination	0	0	0

In 19 inspections involving Medicare providers, we found no evidence that HCFA, prior to making the recertification decisions, obtained adequate information regarding justification for repeat deficiencies. In 30 inspections involving facilities participating only in Medicaid, there was no evidence, except in Arkansas, that the states obtained any information regarding justification for repeat deficiencies. Although Arkansas had generally requested facilities to provide justification for repeat deficiencies, it had not consistently done so and, where facilities failed to respond with justification for some or all of the deficiencies, the state recertified the facility without following up. The responses the state received did not provide the justification required by the regulations. For example, the responses indicated what corrective action would be taken rather than explain why the facility was again out of compliance or the explanation did not indicate that the nursing home had made a good-faith effort to maintain compliance or that it was again out of compliance for reasons beyond the facility's control.

[4]Medicare regulations specify that facilities must document to the state's satisfaction. However, since HCFA makes the final certification decision on Medicare providers, it is not required to accept the state's conclusions as to the adequacy of the facility's justification.

When we asked state survey agency officials in three of the states why they were not applying the repeat-deficiency regulation, they told us either that HCFA had not cited them for failure to follow the regulations or that they were aware that HCFA did not follow the regulation in making certification decisions on Medicare facilities.

HCFA, in its oversight role, was not requiring states to comply with the repeat deficiency regulations. We reviewed HCFA's files on each of the Medicaid-only facilities analyzed and found no evidence that, on reviewing certification documents submitted by the state, HCFA had ever questioned whether the states had made the required determinations. We also reviewed performance evaluations that HCFA prepares on each state survey agency. Although none of the five states visited had formal, consistent procedures—over the entire period covered by our review—for determining and documenting the justifications, none were cited by HCFA for failure to comply with the regulations.

Wisconsin instituted a formal determination and documentation system in August 1985 and Connecticut in March 1985. A Wisconsin official told us that prior to August 1985, the determinations generally were made but on an informal basis.

State and HCFA regional officials told us they were reluctant to follow the repeat-deficiency regulations because they perceived that (1) a decertification action based solely on repeat deficiencies could not be sustained if the facility appealed and (2) decertification is too severe a penalty for most situations involving repeat deficiencies.

Officials in three HCFA regions and the state of Kansas expressed doubt that an attempt to decertify a facility based on repeat deficiencies alone would be upheld through the appeals process. In their opinion, such a case could not withstand the administrative or judicial appeals processes unless it could also be demonstrated that current uncorrected deficiencies jeopardized resident health and safety or seriously limited the facility's capacity to give adequate care.[5] However, HCFA and state officials were not able to cite any cases where decertification action initiated based solely on repeat deficiencies was overturned in the appeals process.

[5]As discussed in the case studies (pp. 65-73), HCFA and the states did cite repeat deficiencies as additional grounds in some cases where decertification was initiated because of serious noncompliance problems.

According to officials in two HCFA regions and state officials in California and Kansas, decertification for repeat deficiencies should be limited to those situations where significant effect on resident care, health, or safety results. A HCFA headquarters official acknowledged that the regulations specify that facilities should be decertified for unjustified repeat deficiencies, regardless of seriousness. However, he also stressed that, if the deficiencies do not seriously affect resident care, health, or safety, it probably would be difficult to successfully decertify the facility.

Subsequent to our inquiries at HCFA headquarters, the agency issued a memorandum to the regional offices confirming that justification for repeat deficiencies must be obtained and documented. This April 1986 memorandum also stressed that "reasonableness" be used in evaluating the justification. The memo states that

> "This means the nature of the deficiency, its effect on patients, whether the deficiency has persisted, and the overall efforts of the provider must be given full consideration."

As emphasized in the above memorandum, the facilities are expected to justify repeat deficiencies. Some latitude may be desirable in determining whether, based on the seriousness of the deficiencies and the adequacy of the facility's justification, it is appropriate to decertify a facility for certain types of repeat deficiencies. However, we believe it needs to be made clear to all participating facilities that they will be held accountable for any repeat deficiencies. The awareness that justification will be demanded may give facilities a greater incentive to maintain compliance. As discussed in the next chapter, we also believe that alternative sanctions are needed to close this gap in the enforcement system that permits facilities to repeatedly ignore federal requirements without incurring any penalty.

Justification Not Required if Deficiency Corrected

Medicare regulations permit nursing homes with repeat deficiencies at the standard level to remain in the program without penalty and without requiring justification for the repeat deficiency if the deficiency is corrected before the end of the ongoing certification period. This enables nursing homes to repeatedly avoid penalty for deficiencies that could affect resident health or safety without providing justification for the repeat deficiencies.

For the 15 skilled nursing facilities participating in Medicare, we identified 10 inspections where regulations did not require the facilities to

provide justification when the same standard(s) were not met in consecutive periods. This was because the state considered corrective action taken during the ongoing certification period, and before the recertification decision was made, to be adequate to achieve compliance with the standard(s). For example, a Connecticut skilled nursing facility failed to meet the pest control standard under the infection control condition of participation in three consecutive surveys because of numerous flies observed throughout the facility. Prior to making a certification recommendation to HCFA on both the second and third inspections, the state made follow-up visits and reported that the facility had achieved compliance with the standard and thus, according to the Medicare regulation, the facility did not have to justify the repeat noncompliance.

By requiring nursing homes with repeat deficiencies at the standard level to provide justification for those deficiencies regardless of corrective actions taken, HCFA could, in our opinion, provide a stronger deterrent to repeat deficiencies.

Repeat Deficiency Regulation Not Applicable to All Deficiencies

Neither the Medicare nor Medicaid regulations requiring justification of repeat deficiencies apply when the repeated noncompliance is below the standard level. This means that skilled nursing facilities that are out of compliance with an element in two consecutive inspections are not subject to any sanction or even required to provide justification for the repeat deficiency unless the home was also out of compliance with the associated standard. While deficiencies reported at the element, but not standard level, may be less serious, they could, in our opinion, still affect patient health and safety and should be corrected. The absence of an alternative, other than decertification to deal with such repeated noncompliance, leaves the nursing home with little incentive to correct the deficiencies.

In 29 inspections involving 14 nursing homes, the facility failed to comply with an element in consecutive inspections but was not required, under the regulations, to provide justification because the associated standard was considered met in one or both surveys.

According to a HCFA official, element-level deficiencies are generally less serious when the facility is in compliance with the associated standard. Nonetheless, serious deficiencies can occur at the element level. For example, a California skilled nursing facility was cited at the element level in three consecutive inspections for deficiencies such as failure to

provide proper care to prevent formation and/or progression of bedsores. This included failure to (1) turn and position bedfast patients and (2) maintain clean, dry skin free from feces and/or urine. However, the facility was cited for failure to meet the associated standard in only the latter two inspections. According to the regulations, the first repeat situation, requiring the facility to justify the continuing deficiencies at the element level, did not occur until the third inspection, at which time the standard had not been met in two consecutive inspections. Therefore, the facility was not required by regulation to justify continuing noncompliance until the third inspection.

The Medicare and Medicaid regulations limiting the application of the repeat deficiency provision to skilled nursing facilities with repeat deficiencies reported at the standard or condition level are inconsistent with the application of the regulations to intermediate care facilities where the provisions apply to all repeat deficiencies. For example, most of the 2,189 skilled nursing facilities cited for failure to meet the element dealing with storing, preparing, distributing, and serving food under sanitary conditions during consecutive inspections were not required to justify their repeat deficiencies because the associated standard was reported as met. The 1,784 intermediate care facilities cited for the same deficiency, however, were required to justify the repeat deficiency.

Of the 44,193 instances in which skilled nursing facilities failed to meet one of the selected standards or elements in two consecutive inspections, only 5,573 of those instances involved standard-level requirements and therefore, required facilities to justify the repeat deficiency. Expanding the requirement to justify repeat deficiencies to element-level deficiencies would, in our opinion, encourage nursing homes to maintain continuous compliance. Until additional sanctions are added to the program, however, nursing homes will continue to have little incentive to maintain compliance.

Conclusions

An effective enforcement program should both deter noncompliance and achieve lasting corrective action where such noncompliance does occur. The current nursing home enforcement program, however, does neither. It is directed primarily towards achieving corrective action after a deficiency has been identified, rather than deterring noncompliance from the outset. Nursing homes that correct deficiencies incur no penalty. And, when they again are out of compliance during the next inspection, HCFA and the states generally recertify them without asking why they

have repeat deficiencies. As a result, nursing homes have little incentive to maintain compliance with nursing home requirements.

HCFA and the states could more effectively use existing legislative authority to encourage timely correction of deficiencies. Specifically, HHS should revise the repeat deficiency regulation to limit its use to those instances where the repeat deficiencies seriously threaten patient health and safety. HCFA and state officials questioned whether the regulation could be successfully applied in instances where the nursing home has taken action to correct the repeat deficiencies. HHS should clarify the regulation to specify that, in the case of repeat deficiencies that seriously threaten the health and safety of residents, decertification will take place regardless of any corrective action taken unless the nursing home provides adequate justification for the repeat deficiency. Finally, the regulation should be revised to require nursing homes to submit justification for all repeat deficiencies that do not seriously threaten patient health or safety, including those reported at the element level or corrected following the inspection. Until additional federal sanctions are available (see ch. 4), states should be encouraged to apply alternative sanctions authorized under state licensing laws to nursing homes with repeat deficiencies that are not adequately justified.

States also should ensure that nursing homes that have been terminated from the Medicaid program are not readmitted to the program unless they can demonstrate that the serious deficiencies that led to their termination have been corrected and there is reasonable assurance that they will not recur.

Recommendation to the Congress

We recommend that the Congress amend title XIX of the Social Security Act to preclude nursing homes terminated from the Medicaid program from being readmitted to the program unless the state survey agency can establish that the deficiencies that led to the termination have been removed and it has reasonable assurance that they will not recur.

Recommendations

We recommend that the Secretary of Health and Human Services revise the repeat deficiency provisions of Medicare and Medicaid regulations to (1) limit the use of decertification to those instances where a nursing home cannot adequately justify repeat deficiencies that seriously threaten patient health and safety, and (2) require nursing homes to justify all repeat deficiencies, including those reported at the element level or subsequently corrected. The Secretary should also direct the HCFA

Administrator to encourage states to apply state licensing sanctions to nursing homes with repeat deficiencies that are not adequately justified.

Alternative Sanctions Needed to Improve Compliance

Penalties short of decertification of nursing homes are needed to deter noncompliance and close some of the gaps in the federal enforcement system. Two potential alternatives are civil monetary fines and bans on admissions of new Medicare and Medicaid patients. While all five states we visited had authority to impose civil monetary fines and one had authority to ban admissions, the deterrent effects of these penalties were reduced because states often gave nursing homes the opportunity to correct the problem and thereby avoid payment of the penalty, limited the amount of the monetary penalty that could be applied, or had lengthy appeals processes that delayed enforcement action. These alternative penalties could enhance the federal enforcement program if designed to overcome the limitations experienced at the state level. Legislation that would authorize alternative sanctions has been introduced in both the House of Representatives and the Senate.

Civil Monetary Fines

In its report,[1] the Institute of Medicine stated that fines are a valuable enforcement tool because they can be applied to less serious violations early and often, thus deterring more serious violations. They also can be applied to serious but isolated violations. The report recommended that authority to impose fines be established and that the amounts of fines be based on the seriousness and duration of the violation. The report also emphasized that, for fines to be effective, it is essential that administrative and legal delays be avoided by prompt hearings.

States' Use Varied

Of 47 states responding to queries by the Institute of Medicine, 26 reported that they could impose civil monetary fines; 13 reported using this authority in 1983.

The potential deterrent effect of civil monetary fines can vary from state to state according to such factors as opportunities to avoid the penalty by correcting the deficiency, limits on the amounts of the monetary penalties, and the appeals processes. For example, while all five states we visited could impose fines, the potential deterrent effect varied because of one or more of the above factors. Table 4.1 shows some of the similarities and variances in fines among the five states.

[1] As of July 1987, HCFA had not implemented any of the recommendations made in this report. However, the agency has developed a proposed action plan that is under review by the Secretary of HHS.

Table 4.1: Variances in States' Use of Fines

Use of fines	Arkansas	California	Connecticut	Kansas	Wisconsin
Number of classes of violations[a]	3	3	4	1	3
Range[b]	$250-$1,000	$100-$25,000	$100-$5,000	$100	$100-$5,000
Terms	Per deficiency	Per deficiency	Per deficiency, per day	Per deficiency, per day	Per deficiency, per day
Limits on amounts	$1,000/month in aggregate	None	None	$500 each deficiency	None
Opportunity to correct prior to payment	Yes	Yes on one class[c]	Yes on three classes	Yes	Yes on one class[c]

[a]Violations are classified according to the seriousness of the deficiency.

[b]Minimum amount on lowest class and maximum amount on highest class.

[c]Fine must be paid if the deficiency reoccurs within a specified period.

Four of the five states have different classes of violations with increasing fines based on the seriousness of the deficiencies. For example, the highest fines generally apply when death or serious harm has occurred or is very likely to occur. Kansas, which does not have different classes of violations, can impose fines only when the deficiencies significantly and adversely affect the health, safety, nutrition, or sanitation of the residents. Payment of fines is waived in some of the states, for some or all classes of violations, when facilities correct the related deficiencies.

While the states initiated action to impose fines in some of the cases we analyzed, the nursing homes were usually able to avoid paying the fine, thus limiting the penalty's deterrent effect. Arkansas and Kansas survey agency officials told us that, while the fines system encourages timely correction of deficiencies, its effectiveness as a deterrent to noncompliance is somewhat limited because of the dollar limitation on maximum fines. A Kansas official also said that he believes the opportunity to avoid a fine by correcting the deficiency weakens the deterrent.

On one or more occasions, Kansas issued warnings to four of the six nursing homes reviewed, notifying them that certain violations were subject to fines if not corrected. The violations included

- unqualified personnel administering medications,
- failure to change positions of bedfast patients at least every 2 hours,
- failure to release residents' restraints at least every 2 hours,

- inadequate records to show whether medications, treatments and services were provided as ordered, and
- improper dishwashing techniques.

In each instance, however, the facility took corrective action prior to the point at which the state could assess a fine.

Although Connecticut assesses fines for certain violations, in most instances facilities are not required to pay. State statutes allow facilities time to correct most classes of violations in lieu of payment. In addition, the statutes require that facilities desiring to contest assessments be granted an informal conference and, if necessary, a formal hearing. According to state officials, facilities usually take corrective action during the appeals process, and the state agrees to waive any fine. Three of the six facilities we reviewed were assessed fines for violations such as failure to (1) have a registered nurse on duty 7 days a week, (2) detect that a resident had exited the facility, and (3) provide therapeutic diets as ordered by a physician. In all three cases, however, the state did not require that the fines be paid because of corrective action taken by the facilities. State officials said that the current fine system was not an effective deterrent because of the opportunity to correct and that the state legislature was considering revisions to the statutes to remove this opportunity.

Seven of the eight California facilities we reviewed had been fined in one or more instance for violations during the periods covered by our review, but the class of violation allowed the facility an opportunity to correct in lieu of paying the fine. For example, 70 of the 96 assessments levied against the seven facilities were for violations that, under state law, the facility was permitted to correct without paying a fine except when repeat violations were involved. The types of deficiencies cited included (1) not notifying physicians immediately when residents exhibited signs of unusual behavior or significant weight changes within a 30-day period, (2) not turning bedfast residents every 2 hours, and (3) not providing residents drinking water for prolonged periods. Although final disposition of all the fines could not be determined because of ongoing appeals or collection actions or incomplete information in the case files, facilities were able to avoid penalties through corrective action. For example, of seven violations that resulted in fines during one certification period, a nursing home paid $1,750 in fines on three violations but avoided payment on four other violations by taking corrective action. The California survey agency officials we contacted did not agree as to the deterrent effect of the fines system. While one official

told us that the appeals process made it difficult to effectively use fines, another stated that the appeals process did not significantly detract from the deterrent effect.

Fines were administered and collected during two certification periods on both the facilities we reviewed in Wisconsin. The fines resulted from deficiencies such as (1) accepting residents who required care the facility was not qualified to provide, (2) abusing a resident, (3) leaving a resident unattended in a potentially dangerous situation, and (4) not properly treating a resident's open wounds. The total amounts collected during these periods ranged from $850 to $14,000. Wisconsin officials believe that the state's fines system is a major deterrent to noncompliance. We did not analyze facility compliance patterns for state requirements to verify this contention, but we did find that a smaller percentage of facilities failed to meet, in two or more consecutive periods, the selected federal requirements shown in appendixes II and III than in the other four states we reviewed.

Other Federal Programs With Authority to Impose Civil Monetary Penalties

Civil monetary fines are currently used by various federal agencies as a means of enforcing regulations. Such agencies include the Environmental Protection Agency, Occupational Safety and Health Administration, Coast Guard, Federal Aviation Administration, and Nuclear Regulatory Commission. Within HHS, the Social Security Act authorizes the Secretary to impose fines for false claims and for certain violations committed by health maintenance organizations. We recently reported that the Food and Drug Administration was hampered in certain of its enforcement responsibilities by lack of authority to impose fines.[2]

The Environmental Protection Agency considers the threat of fines to be an important deterrent in the enforcement programs for which it has such authority. The purpose of the civil monetary fines system for the toxic substances program is to assure that the penalties

- are assessed in a fair, uniform, and consistent manner;
- are appropriate for the violation committed;
- eliminate any economic incentives for violating the statute; and
- deter any violations of the federal statute.

[2]Pesticides: Need to Enhance FDA's Ability to Protect the Public From Illegal Residues (GAO/RCED-87-7, Oct. 27, 1986), ch. 4.

Using a matrix, the penalty system provides standardization and uniformity, yet builds in flexibility to tailor the penalty to the situation. For example, the agency computes a fine that is first based on the nature, circumstances, and extent of the violation, then adjusted upward or downward based on such other factors as the economic benefits from noncompliance; any history of violations, including any changes in ownership; and the violator's ability to pay without endangering continued operation. In establishing the fine, the agency is primarily concerned with the risk to health and environment inherent in the violative action rather than the damage that actually resulted from it. Furthermore, this penalty system has a provision for "settlement with conditions" whereby the fine may be reduced or waived in exchange for the violator agreeing to take extensive and specific remedial actions. Such settlement is, according to the Environmental Protection Agency, used with some restraint so as not to encourage industries to violate the federal requirements until discovered and then offer to correct in hope of avoiding the fine.

While state and federal programs have had mixed results from the application of civil monetary penalties, we believe that a uniform and flexible penalty system would enhance the federal nursing home enforcement program. It would provide a deterrent to initial instances of noncompliance as well as provide fairness in tailoring the sanctions to the seriousness of the infraction. Furthermore, it would add to the enforcement program a tangible means of sanctioning providers, short of total exclusion from the program.

Bans on Admissions

A second alternative to decertification is bans on admissions. Effective August 1986, HCFA issued regulations implementing 1980 amendments to the Medicare and Medicaid statutes authorizing continued participation of facilities that are not in substantial compliance with the requirements if the uncorrected deficiencies do not "immediately jeopardize" resident health or safety. The amendments provide that a facility meeting this criteria first be given a reasonable opportunity to correct the deficiencies. Where substantial compliance is not achieved during that period, the statutes allow the states and HCFA to extend the facility's participation for up to 11 months to provide it with additional time to take corrective action. The amendments further provide that, during this extension, the facility cannot accept any additional program beneficiaries.

The congressional intent of these amendments was to establish an alternative to decertification where deficiencies are not life-threatening while both providing an incentive for facilities to take timely corrective action and avoiding possible trauma to residents associated with relocation. Because HCFA's implementing regulations became effective in August 1986, we did not evaluate this sanction in operation during our field work.

The Institute of Medicine report endorsed bans on admissions. According to the report, bans on admissions may provide less risk to residents in that payment of fines reduces the amount of funds available for care. The report indicated that another advantage of admissions bans is that the resulting loss of income provides a continuing incentive to facilities to achieve compliance. The report also recommended that authority be granted to impose the penalty prior to any hearings and appeals.

The bans on admissions sanction envisioned by the Institute is substantially more flexible than that authorized under current federal statutes. As indicated above, the federal sanction can only be used when facilities are no longer in substantial compliance with requirements after first allowing the facility an opportunity to correct the deficiencies. Also, the federal statutes do not authorize HCFA to impose the penalty in those instances where it is taking direct enforcement action on Medicaid facilities (see p. 11). HCFA central office officials told us that they believe broader authority is needed to impose bans on admissions for less serious violations and, in instances where HCFA takes direct enforcement action, to help deter noncompliance with federal requirements.

State Use of Bans on Admissions

Of 47 states responding to queries by the Institute of Medicine, 32 reported that they could suspend admissions; 15 reported using this authority in 1983.

Of the five states we visited, only Connecticut had state statutory authority to ban admissions. However, statutes limit use of this sanction to emergency situations where facility conditions constitute a threat to resident health, safety, or welfare. Because of the administrative and legal processes involved in initiating bans on admissions, state officials do not consider it to be a deterrent to noncompliance. A Kansas survey agency official told us that, under comparable circumstances, they probably could obtain court injunctions to ban admissions should a facility not agree to do so voluntarily.

Pending Legislation Would Expand Enforcement Options

Legislation introduced in the House of Representatives (H.R. 2270 and H.R. 2770) and the Senate (S.1108) would require the establishment of a range of intermediate sanctions to be applied against nursing homes that do not meet federal requirements.

S.1108, introduced in April 1987, would amend title XVIII of the Social Security Act to require HCFA to establish a range to intermediate sanctions to apply to facilities that do not meet specified federal requirements. Under the bill, HHS would have to establish as alternative sanctions directed plans of correction and the appointment of receivers to manage a facility until it returns to compliance. In addition, HHS would have to establish one or more of the following sanctions:

- Civil monetary penalties,
- On-site monitoring by an agency responsible for conducting certification surveys,
- Withholding or reducing payments to the facility, or
- Any other sanction designated by the Secretary of HHS.

The bill also provides that the Secretary of HHS implement specific criteria as to when and how each of the intermediate sanctions is to be applied, the amounts of any fines, and the severity of each of the penalties. The criteria must, according to the bill, be designed to minimize the time between identification of violations and final imposition of the sanctions and must provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

S.1108 would amend title XIX of the Social Security Act to require the states to develop and implement a comparable range of intermediate sanctions.

H.R.2270, introduced May 5, 1987, would amend title XIX to require that the Secretary of HHS establish, by regulation or otherwise, guidance for alternative sanctions by October 1, 1988, and that states have in place by October 1, 1989, the authority to impose the following penalties:

- Denial of payment for any individuals admitted after a specified date,
- Civil monetary fines for each day during which the facility remains in noncompliance,
- Temporary receivership during the period a facility is being closed or brought into compliance, and
- Emergency authority to close the facility and/or transfer patients.

States would be authorized to use alternate sanctions if they demonstrate to HHS that they would be as effective in deterring and remedying noncompliance. The bill would also provide that the Secretary of HHS could exercise any of the intermediate sanctions available to the state and could impose civil monetary penalties of up to $10,000 for each day of noncompliance with requirements where there is no immediate jeopardy to the health and safety of residents.

Also, H.R. 2270 would require that, if a nursing facility is not in compliance with any of the requirements of participation for a continuous period of more than 6 months, the Secretary and the state must deny payments for newly admitted residents (or existing residents converting to Medicaid from private-pay status) until compliance is achieved.

Finally, H.R. 2270 would require the state or the Secretary to immediately terminate a facility's participation in Medicaid if the facility does not meet one or more of the requirements of participation and the deficiencies immediately jeopardize the health or safety of its residents. The facility would be entitled to a hearing, but only after the termination occurred.

H.R. 2770, introduced June 24, 1987, as a companion to H.R. 2270, would amend title XVIII of the Social Security Act to require that the Secretary of HHS establish guidance for alternative sanctions for nursing facilities participating in the Medicare program. The bill's provisions are essentially the same as those contained in H.R. 2270 with respect to facilities participating in Medicaid.

HCFA's Associate Administrator for Operations, in May 1987 testimony before the Subcommittee on Health and the Environment, House Committee on Energy and Commerce, stated that HCFA believes that states should have flexibility to structure their own sanctions. The Association of Health Facility Licensure and Certification Directors, representing the state survey agencies, and the State Medicaid Directors Association have both endorsed having an array of sanctions available at the federal and state level.

Conclusions

Alternative sanctions such as those that would be established under H.R.2270, H.R. 2770, and S.1108 are needed to strengthen the nursing home enforcement program and give nursing homes an incentive to maintain compliance with federal requirements. The provision of H.R.2270 and H.R. 2770 that would authorize the Secretary of HHS to

establish guidance for alternative sanctions should provide the Secretary the flexibility needed, consistent with due process considerations, to develop sanctions that would overcome some of the limitations cited by states in their use of existing state sanctions. Similarly, the provisions of S.1108 that would require the Secretary to establish regulations providing for imposition of incrementally more severe fines for repeated or uncorrected deficiencies could be used to overcome concerns raised about limitations in the amounts of fines that could be assessed. The bills would, however, give HHS and the states sufficient flexibility to tailor the sanction to the individual case.

Recommendation to the Congress

We recommend that the Congress enact legislation such as S.1108, H.R. 2270, or H.R. 2770 to give HHS and the states additional alternatives for enforcing compliance with nursing home requirements.

Objectives, Scope, and Methodology

In conducting this study of nursing home care, our specific objectives were to determine

- the extent and potential effect of noncompliance with federal nursing home requirements, and
- the adequacy of enforcement actions taken by state and federal agencies once deficiencies are identified.

We did our work at HCFA's headquarters in Baltimore; at HCFA regional offices in Boston, Chicago, Dallas, Kansas City, and San Francisco; and at state survey agencies in Arkansas, California, Connecticut, Kansas, and Wisconsin. We selected four states (Arkansas, California, Connecticut, and Kansas) having large numbers of facilities that repeatedly failed to comply with selected quality of care requirements and a fifth state—Wisconsin—that had identified few repeat offenders. To provide maximum coverage of HCFA regional offices, we selected states from five different regions.

We reviewed and discussed with HCFA headquarters officials the applicable statutes and regulations, policies, and procedures for implementing the survey and certification program. We obtained interpretations and clarifications of certain requirements from the HCFA Administrator.

Also, we interviewed staff of the National Academy of Sciences' Institute of Medicine, which performed a special study[1] of the Medicare and Medicaid nursing home program under contract to HCFA. We designed our review to complement the Institute's work and, where appropriate, incorporated findings from its study.

Assessing the Extent of Chronic Noncompliance

To accomplish our first objective, we (1) identified the nursing home requirements where deficiencies would be most likely to affect patient health and safety and (2) analyzed computerized compliance histories to identify nursing homes that repeatedly failed to meet one or more of the requirements identified as most important.

Identifying the Most Important Requirements

To identify the nursing home requirements that are most important in ensuring resident health and safety, we prepared a questionnaire that listed selected requirements and asked each respondent to indicate the

[1]National Academy of Sciences, Institute of Medicine, Improving the Quality of Care in Nursing Homes, released February 28, 1986.

importance—on a scale of 1 to 5—of each of these requirements; we also asked them to add any other requirements they considered to be important. We selected the requirements for inclusion according to our (1) analysis of HCFA regulations, guidelines, and procedures and (2) preliminary field work in which we analyzed inspection reports.

After pretesting the questionnaires, we mailed them in October 1985 to 14 organizations (see table I.1) that, in our opinion, were knowledgeable regarding the Medicare and Medicaid nursing home programs.

Table I.1: Organizations Queried in Selecting Requirements Important to Resident Health and Safety

Constituency of organization	Name of organization
Nursing home operators	American Association of Homes for the Aging American Health Care Association
Nursing home administrators	American College of Health Care Administrators
Nursing home licensure and accreditation	Association of Health Facility Licensure and Certification Directors Joint Commission on Accreditation of Hospitals
Resident advocates	National Citizens' Coalition for Nursing Home Reform[a] National Senior Citizens Law Center
Health professionals	American Academy of Family Physicians American Medical Association[a] American Osteopathic Association American Public Health Association American Society of Internal Medicine[a] National League for Nursing
Other	Institute of Medicine[a]

[a]These organizations provided general comments but declined to fill out the questionnaire.

Each requirement we initially selected was confirmed by the respondents as being important for resident care, health, and safety. In addition, at the suggestion of one or more respondents, we added 19 skilled and 18 intermediate care facility requirements to the original list, for a total of 126 skilled and 72 intermediate care facility requirements.

Analysis of Compliance Histories

To determine the extent of chronic noncompliance with the selected requirements, we analyzed nursing homes' compliance histories contained in HCFA's Medicare/Medicaid Automated Certification System

(M/MACS). The compliance histories—derived from the detailed inspection reports—show the requirements not met during the four most recent inspections and the status of corrective action.[2]

Data Reliability

We obtained copies of the M/MACS long-term care database showing compliance status of all federally certified facilities at two points—mid-November 1985 and mid-November 1986.

We found problems with both the currency of the data and possible duplications of compliance histories. In determining whether compliance histories for each facility were current, we screened both databases to determine the date of the most recent inspection recorded for each facility shown as currently holding certification. As shown in table I.2, the most recent histories for some of these facilities were for inspections conducted 18 months or more prior to the date of the database. About 11 percent (1,826 of 16,094) of the facilities included in the November 1985 database lacked current survey information.

Table I.2: Currency of Deficiency Histories in M/MACS

	Database	
	November 1985	November 1986
Total nursing homes shown as currently certified[a]	**16,094**	**14,656**
Most recent results entered were prior to:		
May 1, 1984	1,826	N/A
May 1, 1985	N/A	747

[a]Excluded intermediate care facilities for the mentally retarded.

The HHS Office of Inspector General also found that HCFA was not keeping compliance histories on all facilities recorded in the M/MACS as current as possible. In July 1986, the Inspector General reported[3] that HCFA needed to improve timeliness of input.

We found that some facilities were recorded in the November 1985 database twice under different identification numbers, with more current

[2]The M/MACS does not provide detail on the underlying deficiencies that caused a requirement to be reported as not met; those can be identified only by reviewing the deficiency statements (HCFA form 2567) which are on file at HCFA regional offices or at the state survey agencies.

[3]HHS Office of Inspector General, Use of the Medicare/Medicaid Automated Certification System by the Health Care Financing Administration, Audit Control Number 03-60154, July 28, 1986.

survey results shown under newer numbers. Because the database indicated that the facility was certified under two identification numbers, there was some duplication of deficiency histories. HCFA had taken action to eliminate duplicate histories on those facilities in the November 1986 database. However, we were unable to estimate the extent to which there might be other such duplications in either database.

While fewer facilities lacked current histories in the November 1986 database, this database had other problems. In implementing a revised survey process in July 1986, HCFA replaced the survey report forms used during the period covered by our review.[4] The revised survey combined skilled and intermediate care facility requirements on the same form. In several instances, requirements statements shown on the old forms were broken down into two or more component parts on the new form. Furthermore, HCFA assigned new data codes to each requirement cited on the revised survey report forms.

In an effort to assure that existing facility compliance histories would conform with data entered into M/MACS under the revised survey process, HCFA used a software program to convert the former unique data codes to the equivalent data codes for requirements on the revised forms. Some decisions had to be made in converting the codes because HCFA had separated some of the requirements statements listed on the previous survey report forms. As a result, the converted compliance histories in the November 1986 database make longitudinal analysis of compliance histories during this transition period difficult.

After considering the trade-offs, we decided to use the November 1985 database for determining the extent of chronic noncompliance. However, because of our concerns regarding the validity of compliance data on facilities lacking current histories, we excluded from our analysis the 1,826 facilities with most recent inspections more than 18 months old. For the purpose of our review, the universe of nursing homes thus consisted of 14,268 facilities—8,298 skilled and 5,970 intermediate care.

[4]The replacement forms are HCFA forms 519 and 525.

Limitations of M/MACS Analysis

A December 1983 consultant report[5] evaluating the M/MACS database concluded that compliance data generally cannot be used for valid aggregate comparisons among states. According to the report, differences in the ways states—and to some degree each surveyor—conduct inspections and report on deficiencies result in variances in both the number and type of deficiencies cited. Examples of differences in methodology and related effects on numbers and types of deficiencies cited in the report include:

- The number of persons on the survey team and the disciplines represented (e.g., nurse, pharmacist, sanitarian) can effect both the numbers and types of deficiencies cited.
- Some states prefer to cite deficiencies under state licensing requirements rather than under comparable federal requirements where state requirements are more specific and/or licensure sanctions are more effective, thus understating federal deficiencies.
- State policies for training and supervision of surveyors may cause biases in which requirements (types or levels) are cited as not met.

According to the consultant, comparisons of deficiency data among states, without making allowances for the above types of variations, can lead to erroneous conclusions. For example, a state appearing to have a small chronic noncompliance problem might actually have major problems in survey methodology.

The Institute of Medicine report also identified as a problem the variations in the numbers and types of deficiencies cited from state to state. The Institute concluded that, while some variations were probably valid, differences in state agency interpretation of requirements and in survey methodology also were to blame.

Based on problems in survey consistency reported by the HHS consultant and the Institute of Medicine, and our own observations, we concur with the consultant's conclusion that valid comparisons among states could not be made at this time by using M/MACS compliance data. Therefore, we have excluded such comparisons from this report.

[5]SysteMetrics, Inc., The M/MACS Long Term Care Database—Construction of a New Research File and an Assessment of Its Quality and Usefulness, Dec. 1983.

Assessing the Adequacy of Enforcement Actions

To evaluate the adequacy of state enforcement of federal requirements, we reviewed 26 facilities (see table I.3 for characteristics of the facilities selected) that had chronic noncompliance problems and determined whether states complied with federal regulations, guidelines, and procedures. The universe of facilities with chronic noncompliance problems in each state was established through analysis of compliance histories shown in the M/MACS. This universe was further stratified based on the types and numbers of requirements not met by the facilities. In selecting the cases, particular emphasis was placed on chronic noncompliance with nursing services requirements. We chose to focus on some of the states' most difficult enforcement cases, particularly where resident care could clearly have been affected, in order to determine whether available state and federal enforcement tools were adequate to ensure compliance.

Table I.3: Facilities Selected for Detailed Analysis, by State

Type[a]	AR	CA	CT	KS	WI	Total
Skilled nursing facility:						
Medicare/Medicaid	1	7	1	•	•	9
Medicaid only	2	1	•	•	•	3
Skilled and intermediate care facility:						
Medicare/Medicaid	•	•	4	1	1	6
Medicaid only	•	•	1	1	•	2
Intermediate care facility	1	•	•	4	1	6
Totals	**4**	**8**	**6**	**6**	**2**	**26**

[a]Some of the facilities had changes in level of care provided or in program participation during the periods we reviewed. The above table shows the status of each facility as of the date of our review.

In the work done in Arkansas, Kansas, and Wisconsin, facilities were selected from the universe to assure review of a cross-section of facility types (i.e., skilled or intermediate care facility or both) and program participation (e.g., Medicaid only, Medicare/Medicaid). In work done in California and Connecticut, two facilities in each state were selected based on opinions of HCFA and state personnel as to difficult enforcement cases. The balance of the cases (10) in those two states were randomly selected from the sampling universe. Because of the method used to select facilities, these 26 cases may not be representative of all nursing homes in the five states.

To determine the policies and procedures followed by each state visited in implementing the federal survey and certification program, we

reviewed state written guidelines and interviewed state agency personnel. To determine whether federal regulations and procedures were followed by the states in making certification decisions or recommendations on the selected facilities, we analyzed information in case files—inspection and follow-up reports, plans of correction, correspondence, and other memoranda—maintained by the states and obtained comments of state officials. We did not visit and inspect the facilities selected for review because the focus of our review was on evaluating enforcement actions taken based on deficiencies identified and reported over several inspection periods, rather than the adequacy of the deficiency identification and reporting process at any one time.

To evaluate the adequacy of federal enforcement and oversight of the states' survey and certification program, we determined whether (1) HCFA complied with, and required states to comply with, federal regulations, guidelines, and procedures in dealing with the selected facilities and (2) the HCFA region was identifying and reporting state agency systemic noncompliance with federal regulations.

To determine at each HCFA region visited the policies and procedures followed in making certification decisions on Medicare facilities and in overseeing and evaluating the activities of state survey agencies, we reviewed written guidelines and interviewed regional personnel. To determine whether federal regulations and procedures were followed by the regions in making certification decisions on those selected facilities participating in Medicare, we analyzed information in the 26 case files and obtained comments of regional officials.

To determine whether regional oversight was effective in identifying noncompliance by state agencies in the certification process, we analyzed information in case files for the 26 selected facilities for evidence of regional intervention in those instances in which our analysis indicated the state had not followed federal regulations and procedures. We also reviewed reports the regions prepared evaluating the state agencies' performance to determine whether the region was identifying and reporting systemic noncompliance with the federal regulations and procedures. Finally, we reviewed reports that HCFA headquarters prepared evaluating regional performance to determine whether regions were cited for failure to identify and report systemic noncompliance by state agencies.

Evaluating Alternative Sanctions

To evaluate potential alternatives for enforcement of federal requirements, we (1) reviewed current federal enforcement statutes and regulations, (2) obtained information on the types of penalties used by states in their nursing home licensure programs and by the Environmental Protection Agency in its toxic substances and pesticides programs, and (3) obtained and analyzed opinions of HCFA and state officials and the Institute of Medicine on the adequacy of the current enforcement program and recommendations for improving it.

With regard to state licensure enforcement programs, we determined the types of penalties authorized by state statutes and discussed with state officials the effectiveness of those penalties and other enforcement procedures in deterring noncompliance. For each facility we analyzed, we also determined the parallel findings, decisions, and actions taken by the state under the licensure enforcement program.

We discussed regulatory enforcement issues with officials at Environmental Protection Agency headquarters in Washington. This agency was selected because enforcement of the Toxic Substances Control Act (15 U.S.C. 2605 et seq.) and the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.) presented problems similar to those encountered in nursing home enforcement, including shared federal-state enforcement responsibilities. We were also interested in those enforcement programs because the agency has statutory authority to impose civil monetary fines for violations, while HHS does not have such authority for nursing home noncompliance.

The views of directly responsible officials were sought during the course of our work and are incorporated in the report where appropriate. As requested, we did not obtain official agency comments on a draft of this report.

We did our work between April 1985 and March 1987, in accordance with generally accepted government auditing standards, except as noted above.

Extent of Noncompliance With Selected Skilled Nursing Facility Requirements (As of November 1985)

Table II.1 shows the 18 conditions of participation and 126 skilled nursing facility standards and elements we selected for review and the number of facilities that failed to meet the requirements in the (1) most recent inspection, (2) two consecutive inspections during the period of our review, and (3) three or more consecutive inspections. The requirements are grouped under the 18 conditions of participation, with the corresponding standards and elements listed under the conditions. The letter and number appearing after each statement refers to coding on the HCFA survey form. Some requirements have been abbreviated from what appears on the survey form.

Table II.1: Number of Skilled Nursing Facilities With Deficiencies (As of November 1985)

Federal requirement		No. of facilities having deficiencies during:		
			Consecutive inspections:	
		Most recent inspection	Two	Three or more
1.	Condition: The skilled nursing facility is in compliance with applicable federal, state, and local laws and regulations. (F7)	63	17	2
	Standard: The facility, in any state in which state or applicable local law provides for licensing of facilities of this nature, is licensed pursuant to such law. (F8)	19	2	•
	Standard: Staff are licensed or registered in accordance with applicable laws. (F13)	185	55	6
	Standard: The facility is in conformity with all federal, state, and local laws relating to fire and safety, sanitation, communicable and reportable disease, post-mortem procedures, and other relevant health and safety requirements. (F14)	801	622	227
2.	Condition: Facility has an effective governing body, or designated persons so functioning, with full legal authority and responsibility for the operation of the facility. The governing body adopts and enforces rules and regulations relative to health care and safety of patient, to the protection of their personal and property rights, and to the general operation of the facility. (F15)	115	40	2
	Standard: Administrator. (F25)	234	89	11
	Element: The administrator enforces the rules and regulations relative to the level of health care and safety of patients, and to the protection of their personal and property rights. (F27)	509	253	75
	Element: Through meetings and periodic reports, the administrator maintains ongoing liaison among the governing body, medical and nursing staffs, and other professional and supervisory staff of the facility. (F29)	220	34	2
	Standard: Personnel policies and procedures. (F41)	95	24	2
	Standard: Staff development. (F48)	243	110	8
	Standard: Use of outside resources. (F53)	107	23	2
	Standard: Notification of changes in patient status. (F59)	40	6	1
	Standard: Patients' rights. (F62)	81	32	6
	Element: The staff of the facility is trained and involved in the implementation of these policies and procedures. (F66) These patients' rights, policies, and procedures ensure that, at least, each patient admitted to the facility:	206	43	5

(continued)

Federal requirement		No. of facilities having deficiencies during:		
			Consecutive inspections:	
		Most recent inspection	Two	Three or more
	Element: Is transferred or discharged only for medical reasons, or for his or her welfare or that of other patients, or for nonpayment for his or her stay (except as prohibited by titles XVIII or XIX of the Social Security Act), and is given reasonable advance notice to ensure orderly transfer or discharge, and such actions are documented in the medical record. (F70)	94	13	1
	Element: Is encouraged and assisted, throughout the period of stay, to exercise rights as a patient and as a citizen, and to this end may voice grievances and recommend changes in policies and services to facility staff and/or to outside representatives of his or her choice, free from restraint, interference, coercion, discrimination, or reprisal. (F71)	59	5	•
	Element: Is free from mental and physical abuse, and free from chemical and (except in emergencies) physical restraints except as authorized in writing by a physician for a specified and limited period of time, or when necessary to protect the patient from injury to self or to others. (F73)	738	277	63
	Element: Is treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment and in care for personal needs. (F75)	813	323	59
	Element: May associate and communicate privately with persons of his or her choice, and send and receive personal mail unopened, unless medically contraindicated (as documented by his or her physician in the medical record). (F77)	25	2	•
	Element: May meet with, and participate in, activities of social, religious, and community groups at his or her discretion, unless medically contraindicated (as documented by his or her physician in the medical record). (F78)	16	•	•
	Element: May retain and use personal clothing and possessions as space permits, unless to do so would infringe upon rights of other patients, and unless medically contraindicated (as documented by his physician in the medical record). (F79)	84	22	4
	Element: If married, is assured privacy for visits by his/her spouse; if both are inpatients in the facility, they are permitted to share a room, unless medically contraindicated (as documented by the attending physician in the medical record). (F80)	23	•	•
	Element: The policies, which are available to admitting physicians, sponsoring agencies, patients, and the public, reflect awareness of, and provision for, meeting the total medical and psychosocial needs of patients, including admission, transfer, and discharge planning, and the range of services available to patients, including frequency of physician visits by each category of patients admitted. (F83)	344	130	22
3.	Condition: The facility retains, pursuant to a written agreement, a physician, licensed under state law, to serve as medical director on a part-time or full-time basis as is appropriate for the needs of the patients and the facility. The medical director is responsible for the overall coordination of the medical care in the facility to ensure the adequacy and appropriateness of the medical services provided to patients and to maintain surveillance of the health status of employees. (F90)	41	3	•
	Standard: Medical direction and coordination of medical care in the facility are provided by a medical director. (F94)	79	16	•
	Element: Coordination of medical care includes liaison with attending physicians to ensure their writing orders promptly upon admission of a patient, and periodic evaluation of the adequacy and appropriateness of health professional and supportive staff and services. (F96)	216	47	4
	Standard: The medical director is responsible for surveillance of the health status of the facility's employees. (F97)	83	19	•

(continued)

Federal requirement		No. of facilities having deficiencies during: Most recent inspection	Consecutive inspections: Two	Consecutive inspections: Three or more
4.	Condition: Patients in need of skilled or rehabilitative care are admitted to the facility only upon the recommendation of, and remain under the care of, a physician. To the extent feasible, each patient or the patient's sponsor designates a personal physician. (F101)	25	2	•
	Standard: Patient supervision by physician. (F105)	92	29	3
	Element: The facility has a policy that the health care of every patient must be under the supervision of a physician. (F106)	43	4	•
	Element: Physician, based on a medical evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of total patient care. (F107)	176	47	4
	Element: The patient is seen by the attending physician at least once every 30 days for the first 90 days following admission. (F110)	377	180	26
	Element: The patient's total program of care (including medications and treatments) is reviewed during a visit by the attending physician at least once every 30 days for the first 90 days, and revised as necessary. (F111)	568	260	39
	Element: A progress note is written and signed by the physician at the time of each visit, and all orders are signed by the physician. (F112)	718	376	66
	Standard: The facility has written procedures, available at each nurses station, that provide for having a physician available to furnish necessary medical care in case of emergency. (F122)	66	8	2
5.	Condition: The skilled nursing facility provides 24-hour service by licensed nurses, including the services of a registered nurse at least during the day tour of duty 7 days a week. There is an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing needs of all patients. (F123)	180	65	5
	Standard: Director of nursing services. (F124)	135	38	3
	Element: The director is responsible for development and maintenance of nursing service objectives, standards of nursing practice, and nursing policy and procedure. (F128)	1,238	796	239
	Standard: Charge nurse. (F129)	221	72	10
	Element: The charge nurse delegates responsibility to nursing personnel for the direct nursing care of specific patients, during each tour of duty, on the basis of staff qualifications, size, and physical layout of the facility, characteristics of the patient load, and the emotional, social, and nursing care needs of patients. (F133)	373	150	24
	Standard: Twenty-four hour nursing service. (F134)	391	213	33
	Element: The facility provides 24-hour nursing services which are sufficient to meet total nursing needs and which are in accordance with the patient care policies. (F135)	864	388	77
	Element: The policies are designed to ensure that each patient receives treatments, medications, and diet as prescribed, and rehabilitative nursing care as needed; receives proper care to prevent decubitus ulcers and deformities, and is kept comfortable, clean, well-groomed, and protected from accident, injury, and infection; and encouraged, assisted, and trained in self-care and group activities. (F136)	2,377	1,922	855
	Element: Nursing personnel, including at least one registered nurse on the day tour of duty 7 days a week, licensed practical (vocational) nurses, nurse aides, orderlies, and ward clerks, are assigned duties consistent with their education and experience, and based on the characteristics of the patient load. (F137)	414	191	35
	Standard: Patient care plan. (F169)	619	313	59

(continued)

Federal requirement		No. of facilities having deficiencies during: Most recent inspection	Consecutive inspections: Two	Consecutive inspections: Three or more
	Element: In coordination with the other patient care services to be provided, a written patient care plan for each patient is developed and maintained by the nursing service consonant with the attending physician's plan of medical care, and is implemented upon admission. (F170)	997	479	105
	Element: The plan indicates care to be given and goals to be accomplished and which professional service is responsible for each element of care. (F171)	1,705	1,170	337
	Element: The patient care plan is reviewed, evaluated, and updated as necessary by all professional personnel involved in the care of the patient. (F172)	1,837	1,353	415
	Standard: Rehabilitative nursing care. (F173)	361	155	19
	Element: The facility has an active program of rehabilitative nursing care, which is an integral part of nursing service and is directed toward assisting each patient to achieve and maintain an optimal level of self-care and independence. (F175)	1,018	480	89
	Element: Rehabilitative nursing care services are performed daily for those patients who require such service, and are recorded routinely. (F176)	1,204	768	189
	Standard: Supervision of patient nutrition. (F177)	323	102	14
	Element: Nursing personnel are aware of nutritional needs and food and fluid intake of patients and assist promptly where necessary in the feeding of patients. (F178)	991	449	88
	Element: A procedure is established to inform the dietetic service of physicians' diet orders and of patients' dietetic problems. (F179)	256	56	6
	Element: Food and fluid intake of patients is observed, and deviations from normal are recorded and reported to the charge nurse and the physician. (F180)	999	496	115
	Standard: Administration of drugs. (F181)	126	22	1
	Element: The dose of a drug administered to the patient is properly recorded therein by the person who administers the drug. (F186)	1,102	694	185
	Standard: Conformance with physicians' drug orders. (F189)	257	101	18
	Element: Drugs are administered in accordance with written orders of the attending physician. (F190)	1,684	1,016	290
	Standard: Storage of drugs and biologicals. (F201)	83	25	2
6.	Condition: The skilled nursing facility provides a hygienic dietetic service that meets the daily nutritional needs of patients, ensures that special dietary needs are met, and provides palatable and attractive meals. A facility that has a contract with an outside food management company may be found to be in compliance with this condition provided the facility and/or company meets the standards listed herein. (F207)	75	20	3
	Standard: Staffing. (F208)	162	53	8
	Element: Overall supervisory responsibility for the dietetic service is assigned to a full-time qualified dietetic service supervisor. (F209)	665	487	103
	Element: In addition, the facility employs sufficient supportive personnel competent to carry out the functions of the dietetic service. (F211)	169	47	6
	Standard: Menus are planned and followed to meet nutritional needs of patients in accordance with physicians' orders and, to the extent medically possible, in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. (F221)	626	284	68
	Standard: Therapeutic diets. (F222)	292	114	12

(continued)

Federal requirement		No. of facilities having deficiencies during:		
			Consecutive inspections:	
		Most recent inspection	Two	Three or more
	Element: Therapeutic menus are planned in writing, and prepared and served as ordered, with supervision or consultation from the dietitian and advice from the physician whenever necessary. (F224)	1,577	930	265
	Standard: Frequency of meals. (F230)	67	9	2
	Standard: Preparation and service of food. (F237)	227	76	7
	Element: Foods are prepared by methods that conserve nutritive value, flavor, and appearance, and are attractively served at the proper temperatures and in a form to meet individual needs. (F238)	1,245	526	123
	Element: If a patient refuses food served, appropriate substitutes of similar nutritive value are offered. (F239)	280	61	5
	Standard: Hygiene of staff. (F240)	46	5	1
	Standard: Sanitary conditions. (F244)	291	132	30
	Element: Food is stored, prepared, distributed, and served under sanitary conditions. (F246)	3,048	2,189	817
7.	Condition: Facility provides, or arranges for, under written agreement, specialized rehabilitative services by qualified personnel (i.e., physical therapy, speech pathology and audiology, and occupational therapy) as needed by patients to improve and maintain functioning. These services are provided upon the written order of the patient's attending physician. If the facility does not offer such services directly, it does not admit nor retain patients in need of this care unless provision is made for such services under arrangement with qualified outside resources under which the facility assumes professional responsibilities for the services rendered. (F249)	68	9	•
	Standard: Organization and staffing. (F250)	90	14	2
	Standard: Plan of care. (F254)	195	48	6
	Element: Rehabilitative services are provided under a written plan of care, initiated by the attending physician and developed in consultation with appropriate therapist(s) and the nursing service. (F255)	347	98	9
	Standard: If the facility provides outpatient physical therapy services, it meets the applicable health and safety regulations pertaining to such services. (F260)	16	1	•
8.	Condition: The skilled nursing facility provides appropriate methods and procedures for the dispensing and administering of drugs and biologicals. Whether drugs and biologicals are obtained from community or institutional pharmacists or stocked by the facility, the facility is responsible for providing such drugs and biologicals for its patients, insofar as they are covered under the programs, and for ensuring that pharmaceutical services are provided in accordance with accepted professional principles and appropriate federal, state, and local laws. (F263)	61	18	1
	Standard: Supervision of services. (F264)	156	57	3
	Element: The pharmacist reviews the drug regimen of each patient at least monthly and reports any irregularities to the medical director and administrator. (F268)	925	495	132
	Standard: Control and accountability. (F272)	95	26	1
	Standard: The labeling is based on currently accepted professional principles and includes the appropriate accessory and cautionary instructions as well as the expiration date when applicable. (F278)	729	357	66
9.	Condition: The skilled nursing facility has provision for promptly obtaining required laboratory, X-ray, and other diagnostic services. (F286)	9	2	•

(continued)

Federal requirement		No. of facilities having deficiencies during:		
			Consecutive inspections:	
		Most recent inspection	Two	Three or more
	Standard: Provision for services. (F287)	33	15	2
	Element: If the facility provides its own laboratory and X-ray services, they meet the applicable conditions established for certification of hospitals. (F288)	25	6	1
	Standard: Blood and blood products. (F296)	3	•	•
	Element: Blood handling and storage facilities are safe, adequate, and properly supervised. (F297)	4	•	•
10.	Condition: The skilled nursing facility has satisfactory arrangements to assist patients to obtain routine and emergency dental care. (F300)	13	•	•
	Standard: Advisory dentist. (F301)	97	14	2
11.	Condition: The skilled nursing facility has satisfactory arrangements for identifying the medically related social and emotional needs of the patient. It is not mandatory that the skilled nursing facility itself provide social services in order to participate in the program. If the facility does not not provide social services, it has written procedures for referring patients in need of social services to appropriate social agencies. If social services are offered by the facility, they are provided under a clearly defined plan, by qualified persons, to assist each patient to adjust to the social and emotional aspects of the patient's illness, treatment, and stay in the facility. (F308)	51	9	1
	Standard: Social service functions. (F309)	120	31	•
	Element: The medically related social service and emotional needs of the patient are identified. (F310)	613	240	43
	Element: Services are provided to meet them, either by qualified staff of the facility or by referral, based on established procedures, to appropriate social agencies. (F311)	341	102	10
	Standard: Staffing. (F314)	62	6	•
	Element: The social service also has sufficient supportive personnel to meet patient needs. (F317)	97	18	2
12.	Condition: The skilled nursing facility provides for an activities program, appropriate to the needs and interests of each patient, to encourage self-care, resumption of normal activities, and maintenance of an optimal level of psychosocial functioning. (F324)	55	5	2
	Standard: Patient activities program. (F330)	217	62	6
	Element: Provision is made for an ongoing program of meaningful activities appropriate to the needs and interests of patients, designed to promote opportunities for engaging in normal pursuits, including religious activities of their choice, if any. (F331)	906	402	71
	Element: The activities are designed to promote the physical, social, and mental well-being of the patients. (F333)	499	188	29
13.	Condition: The facility maintains clinical (medical) records on all patients in accordance with accepted professional standards and practices. The medical record service has sufficient staff, facilities, and equipment to provide medical records that are completely and accurately documented, readily accessible, and systematically organized to facilitate retrieving and compiling information. (F335)	42	4	•
	Standard: Content. (F344)	150	65	7

(continued)

	Federal requirement	No. of facilities having deficiencies during: Most recent inspection	Consecutive inspections: Two	Consecutive inspections: Three or more
	Element: All medical records contain the following general categories of data: documented evidence of assessment of the needs of the patient, of establishment of an appropriate plan of treatment, and of the care and services provided; authentication of hospital diagnoses (discharge summary, report from patient's attending physician, or transfer form), identification data and consent forms, medical and nursing history of patient, report of physical examination(s), diagnostic and therapeutic orders, observations and progress notes, reports of treatments and clinical findings, and discharge summary including final diagnosis and prognosis. (F346)	2,826	2,300	992
14.	Condition: The skilled nursing facility has in effect a transfer agreement with one or more hospitals approved for participation under the programs, which provides the basis for effective working arrangements under which inpatient hospital care or other hospital services are available promptly to the facility's patients when needed. (F359)	6	•	•
15.	Condition: The skilled nursing facility is constructed, equipped, and maintained to protect the health and safety of patients, personnel, and the public. (F366)	53	9	•
	Standard: Emergency power. (F367)	59	14	4
	Element: Where life support systems are used, emergency electrical service is provided by an emergency generator located on the premises. (F370)	36	18	2
	Standard: Facilities for physically handicapped. (F371)	7	1	•
	Element: The facility is accessible to, and functional for, patients, personnel, and the public. (F372)	19	5	1
	Element: Facility provides simultaneous audible and visual warning signals. (F389)	107	151	30
	Standard: Nursing unit. (F393)	47	13	3
	Element: The nurses station is equipped to register patient calls through a communication system from patient areas, including patient rooms and toilet and bathing facilities. (F395)	699	254	44
	Standard: Patient rooms and toilet facilities. (F396)	73	21	3
	Element: Patient rooms are designed and equipped for adequate nursing care and the comfort and privacy of patients. (F397)	978	381	76
	Element: Each room is equipped with, or is conveniently located near, adequate toilet and bathing facilities. (F401)	257	121	33
	Standard: Facilities for special care. (F403)	32	5	1
	Element: Provision is made for isolating patients as necessary in single rooms ventilated to the outside, with private toilet and handwashing facilities. (F404)	91	25	4
	Element: Such areas are identified by appropriate precautionary signs. (F406)	81	8	•
	Standard: Dining and patient activities rooms. (F407)	30	9	2
	Standard: Kitchen and dietetic service areas. (F413)	79	27	3
	Element: These areas are properly ventilated, and arranged and equipped for sanitary refrigeration, storage, preparation, and serving of food as well as for dish and utensil cleaning and refuse storage and removal. (F415)	1,105	502	95
	Standard: Maintenance of equipment, building, and grounds. (F416)	397	232	48
	Element: The interior and exterior of the building are clean and orderly. (F418)	2,220	1,521	651
	Element: All essential mechanical, electrical, and patient care equipment is maintained in safe operating condition. (F419)	1,640	906	266

(continued)

Federal requirement		No. of facilities having deficiencies during:		
			Consecutive inspections:	
		Most recent inspection	Two	Three or more
	Standard: Other environmental considerations. (F420)	175	65	5
	Element: The facility provides a functional, sanitary, and comfortable environment for patients, personnel, and the public. (F421)	1,150	970	283
	Element: Corridors are equipped with firmly secured handrails on each side. (F427)	306	41	4
16.	Condition: The skilled nursing facility establishes an infection control committee of representative professional staff with responsibility for overall infection control in the facility. All necessary housekeeping and maintenance services are provided to maintain a sanitary and comfortable environment and to help prevent the development and transmission of infection. (F428)	107	32	1
	Standard: Aseptic and isolation techniques. (F435)	330	108	10
	Element: Effective written procedures in aseptic and isolation techniques are followed by all personnel. (F436)	1,605	963	287
	Standard: Housekeeping. (F438)	100	38	4
	Element: Nursing personnel are not assigned housekeeping duties. (F442)	105	14	2
	Standard: Linen. (F444)	247	93	12
	Element: The facility has available at all times a quantity of linen essential for proper care and comfort of patients. (F445)	535	206	41
	Element: Linens are handled, stored, processed, and transported in such a manner as to prevent the spread of infection. (F446)	1,772	1,002	249
	Standard: The facility is maintained free from insects and rodents through operation of a pest control program. (F447)	664	393	108
17.	Condition: The skilled nursing facility has a written plan, periodically rehearsed, with procedures to be followed in the event of an internal or external disaster and for the care of casualties (patients and personnel) arising from such disasters. (F448)	27	5	•
	Standard: Disaster plan. (F449)	54	5	•
	Element: The facility has an acceptable written plan in operation, with procedures to be followed in the event of fire, explosion, or other disaster. (F450)	203	45	•
	Standard: Staff training and drills. (F457)	139	51	4
	Element: All employees are trained, as part of their employment orientation, in all aspects of preparedness for any disaster. (F458)	189	54	5
18.	Condition: The skilled nursing facility carries out utilization review of the services provided in the facility to inpatients who are entitled to benefits under the program(s). Utilization review assures the maintenance of high quality patient care and appropriate and efficient utilization of facility services. There are two elements to utilization review: medical care evaluation studies and review of extended duration cases. (F462)	36	3	•
	Standard: The facility maintains a centralized, coordinated program to ensure that each patient has a planned program of continuing care that meets his or her postdischarge needs. (F527)	104	12	1

Extent of Noncompliance With Selected Intermediate Care Facility Requirements (As of November 1985)

Table III.1 shows the 72 intermediate care facility requirements we selected for review and the number of facilities that failed to meet the requirements in the (1) most recent inspection (2) two consecutive inspections during the period of our review, and (3) three or more consecutive inspections. The requirements are grouped under 18 categories similar to the skilled nursing facility conditions of participation. The letter and number appearing after each statement refers to coding on the HCFA survey form. Some requirements have been abbreviated from what appears on the survey forms.

Table III.1: Number of Intermediate Care Facilities With Deficiencies (As of November 1985)

Federal requirement		No. of facilities having deficiencies during:		
			Consecutive inspections:	
		Most recent inspection	Two	Three or more
1.	State licensure. Facility fully meets all requirements for licensure under state law to provide on a regular basis, health-related care and services. (T7)	34	9	3
2.	Conformity with federal, state, and local laws. The facility is in conformity with federal, state, and local laws, codes, and regulations pertaining to health and safety, including procurement, dispensing, administration, safeguarding and disposal of medications and controlled substances; building, construction, maintenance and equipment standards; sanitation; communicable and reportable diseases; and post-mortem procedures. (T12)	1,113	890	402
3.	Disclosure of ownership. None selected.	•	•	•
4.	Transfer agreement. The facility has in effect a transfer agreement with one or more hospitals sufficiently close to the facility to make feasible the transfer between them of residents and their records. (T20)	46	5	•
5.	Administrative management. The facility maintains methods of administrative management which assure that: There are on duty all hours of each day staff sufficient in number and qualifications to carry out the policies, responsibilities, and programs of the facility. The numbers and categories of personnel are determined by the number of residents and their particular needs. (T25)	495	286	77
	There are written policies and procedures available to staff, residents, and the public. (T45)	242	105	15
	Admission, transfer, and discharge policies shall assure that:			
	Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts. (T47)	87	7	1
	Except in the case of an emergency, the resident, his next of kin, the attending physician, and the responsible agency, if any, are consulted in advance of the transfer or discharge of any resident, and casework services or other means are utilized to assure that adequate arrangements exist for meeting his needs through other resources. (T49)	88	19	1
	Written policies and procedures assure that:			
	Resident is encouraged and assisted, throughout the period of stay, to exercise rights as a resident and as a citizen. (T202)	8	1	•

(continued)

Federal requirement		No. of facilities having deficiencies during: Most recent inspection	Consecutive inspections: Two	Consecutive inspections: Three or more
	Resident may voice grievances and recommend changes in policies and services to facility staff and/or to outside representatives of his or her choice, free from restraint, interference, coercion, discrimination or reprisal. (T203)	15	•	•
	Resident is free from mental and physical abuse. (T207)	45	6	•
	Resident is free from chemical and physical restraints unless authorized in writing by a physician for a specified period of time or in an emergency to protect the resident from injury to himself or others, by order of a designated professional in the absence of a physician. (T208)	298	146	37
	Resident is treated with consideration, respect, and full recognition of his or her dignity and individuality, including privacy in treatment. (T212)	206	52	5
	The facility has a written and regularly rehearsed plan for staff and residents to follow in case of fire, explosion or other emergency. (T55)	549	257	43
	There are written procedures for personnel to follow in an emergency regarding care of the resident. (T57)	74	17	2
	An inservice education program is planned and conducted for the development and improvement of skills of the facility's personnel. (T61)	808	462	107
6.	Administrator. The facility is administered by a person licensed in the state as a nursing home administrator or, in case of a hospital qualifying as an intermediate care facility, by the hospital administrator, with the necessary authority and responsibility for management of the facility and implementation of administrative policies. (T63)	147	39	6
7.	Resident services director. The administrator or an individual on the professional staff of the facility is designated as resident services director and is assigned responsibility for the coordination and monitoring of the residents' overall plan of care. (T64)	149	56	6
8.	Arrangement for services. The facility maintains effective arrangements for required institutional services through a written agreement with an outside resource in those instances where the facility does not employ a qualified professional to render a required service. (T66)	309	158	24
	The facility maintains effective arrangements through which medical and remedial services required by the resident but not regularly provided within the facility can be obtained promptly when needed. (T72)	97	29	5
9.	Rehabilitative services. The facility provides, according to the needs of each resident, specialized and supportive rehabilitative services either directly or through arrangements with qualified outside resources. (T73)	161	44	1
	Care is provided under a written plan of care. (T74)	186	50	2
	Plan of care is based on assessment of the resident's needs. (T77)	189	40	2
	Resident's progress is reviewed regularly. (T78)	205	56	5
	Plan is altered or revised as necessary. (T79)	172	43	4
	Services are provided in accordance with accepted professional practices by qualified therapists or by qualified assistants as defined in the regulations or other supportive personnel under appropriate supervision. (T80)	111	21	1
10.	The facility provides or arranges for social services as needed by the resident. (T82)	137	26	3
	A plan of care for social services is recorded in the resident's record. (T84)	367	145	18
11.	Activities program. The facility provides an activities program which assures that: (T87)	157	37	4

(continued)

Federal requirement		No. of facilities having deficiencies during:		
			Consecutive inspections:	
		Most recent inspection	Two	Three or more
	A plan for independent and group activities is developed for each resident in accordance with needs and interests. (T89)	540	249	46
	The plan is incorporated in his overall plan of care. (T90)	295	107	15
	And is reviewed with the resident's participation at least quarterly and altered as needed. (T91)	542	280	45
	Adequate recreation areas are provided. (T92)	33	6	2
	Sufficient equipment and materials are available. (T93)	38	12	•
12.	Physician services. The facility maintains policies and procedures to assure that each resident's health care is under the continuing supervision of a physician who sees the resident as needed and in no case less often than every 60 days, unless justified otherwise and documented by the attending physician. (T94)	389	222	59
13.	Health services. Provides health services which assure that each resident receives treatments, medications, diets, and other health services as prescribed and planned, all hours of each day, in accordance with the following: (T95)	956	661	207
	Immediate supervision of the facility's health services on all days of each week is by a registered nurse or licensed practical (or vocational) nurse employed full-time on the day shift in the intermediate care facility and who is currently licensed to practice in the state. (T96)	174	58	6
	Responsible staff members are on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire, or other emergencies. (T102)	117	32	5
	A written health care plan is developed and implemented by appropriate staff for each resident. (T103)	499	213	51
	The plan is reviewed and revised as needed, but at least quarterly. (T104)	748	405	86
	Nursing services, including restorative nursing, are provided in accordance with the needs of the residents. (T105)	1,004	652	222
14.	Dietetic services. The facility arranges menus and meal service so that:			
	At least three meals or their equivalent are served daily, at regular times with not more than 14 hours between a substantial evening meal and breakfast. (T106)	130	21	1
	A designated staff member suited by training or experience in food management or nutrition is responsible for planning and supervision of menus and meal service. (T111)	504	390	97
	Special diet menus are planned by a qualified dietitian, or are reviewed and approved by the attending physician. (T112)	534	299	61
	Menus are planned and followed to meet nutritional needs of residents, in accordance with physicians' orders and to the extent medically possible, in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences. (T115)	1,013	661	195
	All food is procured, stored, prepared, distributed, and served under sanitary conditions. (T117)	2,120	1,784	779
	Individuals needing special equipment, implements, or utensils to assist them when eating have such items provided. (T118)	108	16	•
15.	Drugs and biologicals. Nursing home implements methods and procedures relating to drugs and biologicals which assure that:			
	Medications administered to a resident are ordered either in writing or orally by the resident's attending or staff physician. (T123)	568	244	41

(continued)

Federal requirement		No. of facilities having deficiencies during:		
			Consecutive inspections:	
		Most recent inspection	Two	Three or more
	Physician's oral orders for prescription drugs are given only to a licensed nurse, pharmacist, or physician. (T124)	66	6	1
	Medications not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies, and the attending physician is notified. (T127)	228	106	12
	A registered nurse reviews each resident's medications monthly and notifies the physician when changes are appropriate. (T129)	489	267	43
	Medications are reviewed quarterly by the attending or staff physician. (T130)	126	35	3
	All personnel administering medications must have completed a state-approved training program in medication administration. (T131)	514	346	83
16.	Resident record system. The facility maintains an organized resident record system which assures that: (T132)	111	22	2
	The record is available to professional and other staff directly involved with the resident. (T133)	11	1	•
	There is a record for each resident which includes as a minimum: (T135)	119	63	10
	Copies of initial and periodic examinations, evaluations, and progress notes. (T138)	725	498	138
	Assessments and goals of each service's plan of care and modifications thereto; and (T139)	808	486	118
	Discharge summaries. (T140)	629	350	63
	An overall plan of care setting forth goals to be accomplished, through individually designed activities, therapies, and treatments. (T141)	750	421	99
	Entries describing treatments and services rendered (T143) and	804	547	139
	medications administered. (T144)	627	377	85
	All symptoms and other indications of illness or injury including the date, time, and action taken regarding each problem. (T145)	643	399	118
17.	Life safety code. (None selected.)	•	•	•
18.	Environment and sanitation.			
	The facility maintains conditions relating to environment and sanitation as set forth below: (T152)	399	291	96
	Favorable environment for residents:			
	Each room is equipped with or conveniently located near adequate toilet and bathing facilities appropriate in number, size, and design to meet the needs of the residents. (T154)	371	217	68
	Each resident room contains a suitable bed, closet space which provides security and privacy for clothing and personal belongings, and other appropriate furniture. (T156)	353	174	44
	Each room is equipped with a resident call system. (T159)	410	192	39
	The facility has available at all times a quantity of linen essential for proper care and comfort of residents. (T160)	323	141	33
	Each bed is equipped with clean linen. (T161)	172	35	2
	Temperatures of hot water at plumbing fixtures used by residents is automatically regulated by control valves. (T163)	641	331	63
	Corridors used by residents are equipped with firmly secured handrails. (T164)	231	63	9

(continued)

Federal requirement	No. of facilities having deficiencies during:		
		Consecutive inspections:	
	Most recent inspection	Two	Three or more
Provision is made for isolating residents with infectious diseases. (T165)	156	30	4
The facility provides one or more areas for resident dining, diversional, and social activities. (T166)	39	13	4

Case Studies of Nursing Homes With Repeat Deficiencies

The following three case studies illustrate how facilities with serious deficiencies were able to continue in the Medicare and/or Medicaid program(s) despite repeated noncompliance. The major factors contributing to the facilities' ability to continue participation included

- temporary correction of serious deficiencies identified in the current inspection,
- failure of the states and HCFA to require justification of repeat deficiencies, and
- use of the appeals process to overturn or delay imposition of decertification.

Nursing Home A

According to HCFA, a California skilled nursing facility with 60 beds certified for both Medicare and Medicaid has had continuing compliance problems since at least 1978. We analyzed survey results for six certification periods (March 1, 1982 through November 30, 1986).

As shown in table IV.1, four of seven inspections during that period concluded that the facility was not in compliance with several conditions of participation. The facility also failed to meet numerous standards in most inspections, including some on a repetitive basis. The standards the facility failed to meet in two consecutive periods included those for 24-hour nursing services, rehabilitative nursing, aseptic and isolation techniques for infection control, housekeeping, and maintenance of equipment, buildings, and grounds. The types of repeat deficiencies reported under an element level requirement of the 24-hour nursing services standard included restraints improperly applied and/or not periodically released, improper positioning of bedfast residents, improper treatment of bedsores and poor resident hygiene.

Table IV.1: Compliance History of Nursing Home A (March 1982 to November 1986)

	No. of requirements not met by inspection no.						
Level of requirement	**1**	**2**	**3**	**4[a]**	**5**	**6**	**7**
Condition of participation	0	5	6	4	0	3	0
Standard	10	28	21	17	0	20	3
(Standard repeated from prior survey)	(N/A)	(5)	(14)	[a]	(0)	(0)	(2)

[a]These findings resulted from a special inspection the state made following a change in facility ownership. As discussed below (p. 66), HCFA initiated termination action, which was later overturned in federal court.

The facility failed to meet the nursing services, infection control, and governing body and management conditions of participation in 4 of the 7

inspections (2, 3, 4, and 6). It failed to meet the physical environment and resident records conditions of participation in two inspections each.

Although the second inspection initially found that the facility was ineligible for recertification, a subsequent follow-up visit found that the facility had taken sufficient corrective action to comply with all conditions of participation. HCFA elected to recertify the facility. HCFA had extended the previous certification an additional 60 days, which gave the facility extra time to take corrective action.

As a result of a facility change of ownership following the third inspection, the state conducted a special inspection and, upon finding that the facility failed to meet four conditions of participation, recommended that the facility be terminated from the Medicare and Medicaid programs. HCFA concurred and notified the facility it would be terminated based on both the degree of noncompliance found in the inspection and historical noncompliance, which, according to HCFA, indicated that the facility, even under new management, either did not have the capability or the intent to maintain compliance with the requirements. As summarized by HCFA, (1) there was little prospect of the facility achieving and maintaining compliance, (2) the facility posed a threat to patient health and safety, and (3) the deficiencies limited the facility's capacity to render adequate care. HCFA subsequently held an informal reconsideration meeting at the provider's request.[1] However, the initial decision to terminate was upheld by HCFA and became effective June 13, 1984, for both the Medicare and Medicaid programs.

Because the facility had alleged in the above meeting and on other occasions that corrective action it had taken placed it in compliance with all conditions and standards, HCFA directed that the state conduct an inspection to verify the facility's claim and, if found to be in compliance, conduct a second survey 30 days later to determine whether compliance was maintained (i.e., reasonable assurance). The state reported after both inspections that all conditions and standards were met and, as a result, HCFA recertified the facility effective July 20, 1984.

During this same period, the facility appealed the termination action in federal district court. The court permanently enjoined HCFA and the state from denying Medicare and Medicaid payments to the facility for the

[1]Medicare regulations and guidelines require that, prior to invoking decertification, the facility be given an opportunity to request that HCFA make a thorough, independent review of the decision and the evidence, including any new information not considered in the initial decision.

period in question (June 13 through July 20, 1984). The court based its decision on the facility's argument that it had not been given a meaningful pretermination hearing, and that HCFA could have held such a hearing without any inconvenience or potential harm to residents, as evidenced by the fact that (1) HCFA did not act to terminate the provider agreement until more than 2 months had passed since the survey providing cause for termination, and (2) at the time HCFA had affirmed the decision to decertify, the state had completed the first readmission survey and found the facility was in compliance with no danger to residents. The court decision, in effect, ruled that the facility be retroactively readmitted to the programs, thereby eliminating any period of decertification.

In the next inspection, however, the state found the facility again out of compliance with three conditions of participation and 20 standards. The state recommended that certification not be renewed, and HCFA notified the facility it would be terminated on grounds similar to those cited in the June 1984 adverse action. However, the state reported in a subsequent follow-up visit that the facility had achieved compliance with all the conditions of participation and HCFA recertified the facility.

As indicated in table IV.1, three of the inspections disclosed that the facility had failed to meet some of the same standards in two consecutive periods. In the first instance where standards were not met in consecutive inspections, the facility was not required by the Medicare regulations to justify the repeat deficiencies because the facility achieved compliance with the standards before the end of the ongoing certification period. In the other two instances, justification for repeat deficiencies should have been established. However, we found no evidence that either the state or HCFA established or documented that the repeat deficiencies were justified. A State official told us that HCFA did not ask them to obtain such justifications. A HCFA regional official told us the region generally does not require such justifications because certification could not be successfully withheld even if the justification proved to be inadequate.

Nursing Home B

A Kansas nursing home with 35 skilled and 114 intermediate care Medicaid-certified beds was terminated from the Medicaid program for 28 days in February 1982 because the nursing home failed to meet five conditions of participation. The state ruled that (1) the deficiencies limited the nursing home's capacity to provide adequate care, and (2) repeat deficiencies were not for reasons beyond the nursing home's control nor

had it made a good-faith effort to maintain compliance. Prior to denying the facility's certification, the state conducted an evidentiary hearing, and the hearing officer's report upheld the decision to decertify. Following a change of ownership, the state inspected the nursing home, found that it was in adequate compliance, and recertified it for Medicaid in March 1982.

We analyzed inspection results for four certification periods, beginning in April 1983 and ending January 1986 (34 months) as well as events surrounding the nursing home's appeal of a state action to decertify the facility, which was not resolved until December 1986. As shown in table IV.2, four of the five inspections during the periods covered by our review disclosed that the facility was not in compliance with several skilled nursing facility conditions of participation and thus was ineligible for recertification at the conclusion of those inspections. The facility also failed to meet numerous standards in most periods, including some on a repetitive basis.

Table IV.2: Compliance History of Nursing Home B, (April 1983 - January 1986)

	No. of requirements not met by inspection no.				
Level of requirement	**1**	**2**	**3**	**4**	**5**
Condition of participation	7	6	0	6	5
Standard	40	20	3	33	22
(Standard repeated from prior survey)	(N/A)	(11)	(2)	(3)	(16)

The standards the facility failed to meet in two consecutive periods included 24-hour nursing service, aseptic and isolation techniques for infection control, pest control, and maintenance of equipment, building, and grounds. The types of repeat deficiencies reported under an element-level requirement of the 24-hour nursing services standard included failure to (1) periodically turn bedfast patients, (2) take other preventive skin care measures on bedfast patients, (3) periodically remove residents' restraints and exercise residents, (4) properly insert and/or monitor feeding or drainage tubes, and (5) properly maintain resident hygiene.

The facility failed to meet the nursing services, infection control, and physical environment conditions of participation in four of the five inspections, dietetic services in three inspections, and specialized rehabilitative services, patient activities, and governing body and management each in two inspections.

Although the first inspection disclosed that the facility was ineligible for recertification, subsequent follow-up visits disclosed that the facility had taken sufficient corrective action to comply with all conditions of participation, and the state elected to recertify the facility. The state had extended the previous certification period 1 month, which gave the facility additional time to take corrective action.

The facility changed ownership in June 1983. A HCFA regional inspection team conducted a survey about 1 month later and found the facility did not meet six conditions of participation and 20 standards. HCFA notified the state that it was exercising its "look behind authority"[2] and told the facility it had 60 days to take corrective action or be terminated from the Medicaid program. A subsequent HCFA follow-up visit indicated that the provider was making adequate progress in correcting the deficiencies. After approving the plan of correction, HCFA returned control of the case to the state agency. The state elected to recertify the facility based on HCFA's findings. In conjunction with the change of ownership and time HCFA alloted for reaching compliance, the state granted two consecutive extensions of the previous certification period for 2 and 3 months, respectively.

Following the next inspection, the facility was recertified when the state found that the facility met all conditions of participation and most standards. However, in the fourth inspection, which was conducted about 7 weeks after another change in ownership, the state found the facility failed to meet six conditions of participation and 33 standards. As a result, the state issued a formal notice to revoke the facility's license,[3] filed a petition in state court for authority to place the facility in receivership, and notified the facility that it could no longer admit Medicaid recipients. However, when subsequent follow-up visits disclosed that the provider had taken sufficient corrective action, the state recertified the facility and discontinued the receivership action and Medicaid admissions ban. Although the state revoked the facility's license, it allowed continuing operation through issuance of a 6-month provisional license.

In the fifth inspection, the state found that the facility failed to meet five conditions of participation and 22 standards. A follow-up visit

[2]Medicaid statutes authorize HHS to render certification decisions on Medicaid-only providers when federal inspections find that facilities do not satisfactorily comply with requirements.

[3]The notice did not specify that the state also intended to decertify the facility. However, under the Medicaid regulations, facilities must have a state license to participate in the program.

about 8 weeks later disclosed that the facility continued to have serious noncompliance problems. The state notified the facility in November 1985 that the federal certification and state license would not be renewed. The stated grounds for decertification were that (1) the deficiencies, individually and in combination, jeopardized the health and safety of residents and seriously limited the facility's capacity to give adequate care, and (2) no good-faith effort had been made to stay in compliance in some instances of repeat deficiencies. The state conducted an evidentiary hearing in December 1985 concerning the proposed adverse action. At that hearing, the facility testified as to corrective actions taken since the state's follow-up visit as well as plans for additional corrective action.

Because the certification period and Medicaid provider agreement would expire at the end of January 1986, the facility obtained a temporary restraining order in state court enjoining the state from discontinuing Medicaid payments or relocating beneficiaries before resolution of the administrative appeal. Although the initial order issued by the hearing officer in February 1986 confirmed that the state had grounds based on repeat deficiencies for nonrenewal of the certification and license, the hearing officer ordered the state to issue a 6-month certification and provisional license, because of the facility's efforts to achieve satisfactory compliance. After reviewing the initial order, the head of the survey agency rejected it and issued a final order upholding the decision to not renew the certification and licensure.

The facility appealed the final order to the state court on the basis that the decision was not issued within time limits specified in state statutes. The court ruled that, because the final order was not issued within the statutory deadlines, the recommendations in the initial order should stand and the facility was entitled to both certification and licensure through September 25, 1986. While the state appealed this ruling, it also agreed to conduct another inspection of the facility. The November 1986 inspection disclosed that the facility did not meet the nursing services condition of participation.

In December 1986, the facility owners agreed to voluntarily withdraw from the Medicaid program, relocate all residents, and surrender all claims to operate as a nursing home after December 31, 1986. The state was eligible for federal financial participation in payments made to the facility from February through December 1986 because current HCFA policy is to continue participation for up to 12 months after expiration

of the certification and provider agreement periods where court orders prohibit invoking decertification during the appeals process.[4]

In instances in which the repeat deficiency regulation applies, we found no evidence that the state established or documented that the repeat deficiencies were justified. State officials told us that it was difficult to determine with any degree of validity the justifications required by regulations. They also stated that a decertification action based solely on repeat deficiencies probably could not be successfully carried out unless the facility also had serious uncorrected deficiencies. According to those officials, they did invoke the repeat deficiency regulation in the latter circumstance. For example, in both decertification actions on this facility (1982 and 1985), the grounds for the action included both serious current deficiencies and lack of adequate justification for repeat deficiencies.

Nursing Home C

We analyzed inspection results for five certification periods (March 1982-April 1986) for a California nursing home with 87 skilled nursing facility beds certified for both Medicare and Medicaid. During the last three certification periods, 47 of those beds were also certified for intermediate care. As discussed below, the facility was decertified for about 7 months of this period (August 1984-March 1985) and had been decertified again at the time of our review.

As shown in table IV.3, four of the seven inspections we analyzed disclosed that the nursing home was not in compliance with two or more conditions of participation, thus making it ineligible for recertification at the conclusion of those inspections. The nursing home also failed to meet numerous standards in most periods, including some on a repetitive basis. The standards the facility failed to meet in two or more consecutive periods included 24-hour nursing services, patient care plan, and pest control. The types of repeat deficiencies reported under an element level requirement included failure to periodically release or exercise restrained residents and poor resident hygiene.

[4]In October 1985, HCFA published a proposed rule to limit this period to 120 days because states were not vigorously pursuing decertification. As of July 1987, the rule had not been finalized.

Table IV.3: Compliance History of Nursing Home C, (March 1982-April 1986)

	No. of requirements not met by inspection no.						
Level of requirement	**1**	**2**	**3**	**4[a]**	**5**	**6**	**7**
Condition of participation	0	0	6	4	0	2	2
Standard	5	9	12	30	1	11	17
(Standard repeated from prior inspection)	(N/A)	(4)	(3)	(8)	(1)	(1)	(4)

[a]Inspection resulted in facility decertification (Aug. 8, 1984-Mar. 5, 1985).

[b]Inspection resulted in facility decertification on May 30, 1986.

The facility failed to meet nine different skilled nursing facility conditions of participation in one or more inspections. The nursing services condition was not met on three occasions and infection control, governing body and management, and medical records each on two occasions.

In the first two inspections, the facility met all conditions of participation. HCFA recertified the facility for 12 months on each occasion. In the third inspection, the facility failed to meet 6 conditions of participation and 12 standards. The state recommended that HCFA not renew the certification, and HCFA notified the facility that it was not eligible for recertification. HCFA later recertified the facility for 6 months when the state reported that a follow-up visit established that all conditions of participation and standards were met.

In the fourth inspection, the state reported that 4 conditions of participation and 30 standards were not met and again recommended that certification not be renewed. HCFA concurred and notified the facility that certification would be terminated effective August 8, 1984. HCFA concluded that conditions in the facility posed a threat to resident health and safety, the deficiencies limited the facility's capacity to render adequate care and, given recurring deficiencies in recent inspections, there was little prospect of the facility achieving and maintaining compliance. HCFA had an informal reconsideration meeting and agreed to have the state conduct another survey but also ruled that the termination decision would stand. The facility was terminated from both the Medicare and Medicaid programs on the specified date. The state visited the nursing home about 2 months later and reported the facility continued to be in substantial noncompliance with the requirements.

Following a change of ownership in January 1985, the facility applied for readmission to the Medicare and Medicaid programs. The state's inspection disclosed that the facility had been renovated and that only

three requirements were not met (one standard, two elements). HCFA certified the facility for the period March 6-September 30, 1985.

However, after the next inspection disclosed that the facility failed to meet two conditions of participation and a follow-up visit 2 months later disclosed that they still were not met, HCFA notified the facility that the certification would not be renewed. Prior to the expiration date, the state performed a second follow-up and reported that one of the conditions still was not met. After analyzing the state's report, HCFA concluded that the condition was "minimally met" and elected to recertify the facility for 6 months.

The next inspection disclosed that the facility failed to meet two conditions of participation and 17 standards, including the nursing services condition and all 9 supporting standards. HCFA concluded that the deficiencies constituted immediate jeopardy to resident health and safety and notified the facility on May 9, 1986, that the certification would be terminated May 30. The state made a follow-up visit on May 29 and reported that all conditions of participation were met. However, after reviewing the state's report, HCFA concluded that many of the problems in nursing services continued and that the condition was not met. HCFA therefore elected to let the termination stand.

In one period in which standards were not met in consecutive periods, the facility was not required by the Medicare regulations to justify the repeat deficiencies because the facility achieved compliance with the standards before the end of the ongoing certification period. In three other periods, justification should have been established. However, we found no evidence that either the state or HCFA established or documented that the repeat deficiencies were justified.

A State official told us that HCFA's policy is to not require that justification be established. A HCFA regional official told us that the region generally does not require such justification because certification cannot be successfully withheld even if the justification proves to be inadequate. In their opinion, a decertification action will not withstand appeals unless the facility also has serious current deficiencies. In the case of this facility, the grounds for the August 1984 termination included both serious current deficiencies and its history of recurring deficiencies, which HCFA stated indicated that the facility either did not have the capability or the intent to maintain compliance.

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